

Languages

- Russian (Conversational)

Admitted to Practice

- Colorado
- Navajo Nation
- U.S. District Court for the District of Colorado
- U.S. Court of Appeals, Fifth Circuit

Related Links

- [Greenberg Traurig LLP is Ranked in Chambers USA 2005](#) 
Chambers & Partners, July 2005
- [Troy Eid Shareholder of Greenberg Traurig LLP Denver Office Makes the 2005-2006 Chambers & Partners USA Guide](#)
Press Release, June 14, 2005
- [Hudson to Head Greenberg Traurig's Denver Governmental Affairs Group](#)
Press Release, December 3, 2004
- [Eid tapped for state personnel board](#) 
Rocky Mountain News, June 30, 2004
- [Greenberg Traurig LLP Continues Denver Expansion: Troy Eid Joins Firm As a Shareholder](#)
Press Release, November 7, 2003

[Owens' ex-chief counsel to join Greenberg Traurig](#) 
Rocky Mountain News, October 1, 2003

PHILLIP J. GREEN

Work

330 Ionia Avenue, N.W.
Grand Rapids, Michigan 49503
(616) 456-2404

Home

EXPERIENCE

January 2006 to
Present

**DEPUTY CHIEF, CRIMINAL DIVISION, UNITED STATES
ATTORNEY'S OFFICE, WESTERN DISTRICT OF MICHIGAN,
Grand Rapids, Michigan**

Currently serving as the Deputy Chief of the Criminal Division, supervising nine Assistant United States Attorneys (AUSAs), as well as overseeing the operations of two branch offices. Responsible for reviewing charging and plea decisions, pleadings and memoranda, and all other aspects of criminal prosecutions. Also serving as the District's Project Safe Neighborhoods (PSN) Coordinator, overseeing and supervising all aspects of the PSN program.

January 2005 to
January 2006

**ASSISTANT UNITED STATES ATTORNEY,
WESTERN DISTRICT OF MICHIGAN, Grand Rapids, Michigan**

Served as an AUSA prosecuting violent crime, including drug and firearms-related offenses. Also served as the District's Project Safe Neighborhoods (PSN) Coordinator.

October 2001 to
January 2005

**FIRST ASSISTANT UNITED STATES ATTORNEY,
WESTERN DISTRICT OF MICHIGAN, Grand Rapids, Michigan**

Served as First Assistant to United States Attorney Margaret M. Chiara. Responsible for overall supervision and management of the District, including 34 AUSAs and 55 support staff. Acted as liaison with the District's federal judges and the law enforcement community. Served as Acting United States Attorney during Ms. Chiara's temporary absences from the District.

January to
October 2001

**UNITED STATES ATTORNEY,
WESTERN DISTRICT OF MICHIGAN, Grand Rapids, Michigan**

Served as United States Attorney for the Western District of Michigan, first by interim appointment of the Attorney General and later by appointment of then Chief United States District Judge Richard Alan Enslen. The District consists of 49 counties in the western half of Michigan's Lower Peninsula and the entire Upper Peninsula, and it includes two staffed branch offices in Marquette and Lansing. In size, the District ranks 21st out of 94 districts nationally.

1998-2001

**DEPUTY CHIEF, CRIMINAL DIVISION, UNITED STATES
ATTORNEY'S OFFICE, WESTERN DISTRICT OF MICHIGAN,
Grand Rapids, Michigan**

Supervised eight to ten AUSAs in the General Crimes section of the Criminal Division.

1995-1998
1991-1994

**UNITED STATES DEPARTMENT OF JUSTICE, CIVIL
DIVISION, FEDERAL PROGRAMS BRANCH, Washington, D.C.
Trial Attorney**

Appointed through the Attorney General's Honors Program. Represented the United States and federal agencies in litigation involving constitutional and administrative challenges to federal statutes and programs, national security issues, Freedom of Information Act (FOIA), Privacy Act, and employment discrimination (Title VII). Handled all aspects of case management, drafted motions and legal memoranda, conducted discovery and negotiated settlements.

1994-1995

**BRYAN CAVE LLP, St. Louis, Missouri
Associate – Labor and Employment Relations Department**

Represented national clients before federal and state courts, the National Labor Relations Board, and the Equal Employment Opportunity Commission.

1990-1991

**HONORABLE THEODORE McMILLIAN, UNITED STATES
COURT OF APPEALS FOR THE EIGHTH CIRCUIT
Judicial Law Clerk**

EDUCATION

SAINT LOUIS UNIVERSITY SCHOOL OF LAW, St. Louis, Missouri
Juris Doctor, *magna cum laude*, 1990
Class Rank: First in Class (01/192)
Editor in Chief, Saint Louis University Law Journal, Vol. 34 (1989-1990)

SAINT MEINRAD COLLEGE, St. Meinrad, Indiana
Bachelor of Arts, Philosophy major, 1982

COURT/BAR ADMISSIONS

United States Supreme Court
United States Court of Appeals for the Eighth Circuit
United States Court of Appeals for the Sixth Circuit
United States District Court for the Eastern District of Missouri
United States District Court for the Western District of Michigan
Illinois
Missouri

MILITARY SERVICE

1974-1976 **UNITED STATES NAVY**
1976-1979 **UNITED STATES NAVY RESERVES**
Honorable Discharge

RODGER A. HEATON

(217) 492-4450 (work)

Work Experience

United States Attorney (Appointed by Attorney General Gonzales), Central District of Illinois (December 2005 - Present)

Supervised and led 29 criminal and civil division AUSAs, and 36 paralegal, legal assistant and student support personnel in the four offices comprising the Central District of Illinois. Generated staff and attorney support for increasing the productivity of the USAO, reflected in part by the filing of felony charges in 80 cases in January through March 2006 (a substantial increase over the prior year's rate). Initiated the formation of the Central Illinois Cybercrime Unit in Springfield, which is a partnership between the USAO, FBI, and ICE focused heavily on investigation and prosecution of child exploitation and child pornography crimes. Oversaw the finalization of health care fraud settlements which will lead to the recovery of nearly \$3 million for the Medicare Trust Fund. Focused on maintaining and strengthening strong relationships between key local, state and federal law enforcement offices throughout the district. Developed a plan to increase the office's capability to handle the increasing immigration appeal caseload, without a corresponding reduction in the other work product of the office.

Supervisory Assistant United States Attorney, U.S. Attorney's Office, Central District of Illinois, Springfield, Illinois

Chief, Civil Division (May 2003 - Present)

Supervises all civil division attorneys in Springfield, Urbana, and Peoria offices, as well as the support staff in the Financial Litigation Unit and the Health Care Fraud investigator. Responsible for health care fraud litigation, civil case intake, settlements, trial supervision, and appeals for all civil cases including federal tort claims, constitutional torts, employment discrimination, environmental, tax, bankruptcy, collections, and health care fraud matters.

Litigation Partner, Kirkland & Ellis (January 2001 - April 2003) Chicago, Illinois

Represented firm clients in trial and appellate litigation in federal and state courts, primarily in antitrust, trade secret theft, consumer fraud class action, white collar criminal defense and automotive franchise related matters. Advised clients in internal corporate investigations and regarding electronic evidence and computer intrusion related matters. Representative clients included: General Motors Corporation; Mitsubishi Motor Corporation; Blue Cross Blue Shield of Illinois; Polaris Corp.; Code Hennessey & Simmons (venture capital firm); 3M Corp; KM Europa Metal (international copper manufacturer).

**Associate Independent Counsel, Office of Independent Counsel (September 1997 - July 1998).
Little Rock, Arkansas; Washington, D.C.**

Member of Little Rock trial team in successful prosecution of former Governor Jim Guy Tucker and two business associates in complex tax fraud scheme. Personally argued the appeal to the Eighth Circuit relating to the restitution order in the *Tucker* tax fraud case.

Chair of Litigation Group responsible for litigation and preparation of briefs and oral argument on several complex constitutional, statutory and common law issues in all levels of the federal court system including in the 8th and D.C. Circuits, and in the United States Supreme Court.

**Supervisory Assistant United States Attorney, U.S. Attorney's Office,
Central District of Illinois, Springfield, Illinois**

Chief, Appellate Section (July 1990 - December 2000)

Wrote and edited briefs of approximately 25 attorneys in hundreds of felony cases comprising the full range of federal crimes, personally briefed and argued over 60 appeals in the Seventh Circuit, including twice en banc. Supervised the preparation of and edited briefs in civil appeals involving Federal Tort Claims Act and *Bivens* actions.

Springfield Branch Chief (January 2000 - December 2000)

Supervised 8 criminal division attorneys, 3 civil division attorneys, and 17 support staff members. Responsible for criminal case intake, grand jury supervision, and administrative supervision of the Springfield office.

In addition to supervisory duties, I also have carried a trial case load. Personally tried several cases to successful verdicts in cases involving conspiracy, mail fraud, money laundering, narcotics, false claims, bank robbery, and tax evasion charges. I managed several complex white collar and business crime investigations involving bribery, public corruption, fraud and price fixing (including co-management of an 18 month undercover investigation of executives engaged in a multinational price fixing scheme).

Computer Crime Specialist (February 1995 - December 2000). Responsible for advising attorneys on legal and technical issues arising from electronic searches and seizures, crimes committed with computers and against computer networks; participated in a national network of prosecutors that worked with the Justice Department's Computer Crime and Intellectual Property Section to facilitate multi-district, multi-agency computer crime cases.

Dept. of Justice Awards

Director's Award, Executive Office of United States Attorneys, United States Department of Justice, October 1998 (by U.S. Attorney General Janet Reno)

Special Achievement Awards, March 1991, October 1995, October 1998

Recipient of Certificates of Merit or Appreciation,
November 1990 (by Director John Simpson, U.S. Secret Service)
October 1998 (by Director Louis Freeh, Federal Bureau of Investigation)

Education

J.D., Indiana University School of Law, Bloomington (1985);
Magna Cum Laude; Editor-in-Chief, Indiana Law Journal;
Order of the Coif

B.S., University of Illinois-Urbana Champaign (1981)(Agricultural Economics)

Other Professional Experience

Adjunct Professor, *White Collar Crime*, University of Illinois College of Law, Champaign-Urbana, (1993 - 1997)

Assistant United States Attorney, Southern District of Indiana, Indianapolis, IN
(April 1989 - July 1990)(tried several felony narcotics and weapons smuggling cases arising at the federal penitentiary in Terre Haute)

Associate (Litigation), Sullivan & Cromwell, Washington, D.C. (1987- 1989)

Law Clerk, Hon. Sarah Evans Barker, Chief Judge, U.S. District Court, Southern District of Indiana, Indianapolis, IN (1985-1987)

Member, Committee to Revise the Pattern Criminal Jury Instructions for the United States Court of Appeals for the Seventh Circuit (1997-1998)

Instructor, Attorney General's Advocacy Institute (assorted courses - 1991-1996)

Bar Admissions

U.S. Supreme Court, U.S. Court of Appeals (Seventh, Eighth, and D.C. Circuits)
U.S. District Court (N.D. Ill - trial bar, C.D. Ill., D.D.C., N.D. Ind., S.D. Ind.)
Illinois, Indiana (inactive), District of Columbia (inactive)

Community Activities

School Board Member, Rochester, Illinois Public Schools, 1995-1999

Coach, Rochester Youth Athletic Association (Little League baseball), 1993- 1995

Instructor, Springfield Tennis Academy, 1995-1996
(summer program for underprivileged youth)

Personal Information

GEORGE E. B. HOLDING

EXPERIENCE

First Assistant United States Attorney for the Eastern District of N. C., 2002-present
Supervise all federal criminal prosecutions and civil litigation in N. C.'s 44 eastern counties. Manage 35 attorneys, 50 support staff, and an \$8 million budget.

Maupin Taylor, PA, Raleigh, N. C., 2001-2002
Counsel

Senator Jesse Helms, Washington, D. C., 1999-2001
Legislative Counsel for tax, business, and special projects.

Kilpatrick Stockton, LLP, Raleigh, N. C., 1997-1999
Associate Attorney practicing in the areas of taxation and government relations.

U. S. District Judge Terrence W. Boyle, Eastern District of N. C., 1996-1997
Law Clerk responsible for criminal and civil litigation.

EDUCATION

Wake Forest University School of Law, J.D., 1996
Member of the Law Review, Moot Court, National Trial Team, and Federalist Society.

Wake Forest University, B.A., 1991
Graduated with Honors in Classical Studies and Phillips Award for Classical Languages.

The Groton School, Groton, MA, 1986
Graduated with honors.

PERSONAL NOTES

REFERENCES

The Honorable Frank D. Whitney, United States Attorney, E.D.N.C.
The Honorable Terrence W. Boyle, United States District Judge, E.D.N.C.
The Honorable I. Beverly Lake, Jr., Chief Justice of the N. C. Supreme Court
The Honorable Rhoda Billings, Fmr. Chief Justice of the N. C. Supreme Court
The Honorable Robinson Everett, Fmr. Chief Judge of the U. S. Court of Appeals for the Armed Services

MARTY J. JACKLEY

PROFESSIONAL EXPERIENCE

January 2002 - Present	Partner
August 1997 - December 2001	Associate Attorney Gunderson, Palmer Goodsell & Nelson, LLP Rapid City, South Dakota, (605) 342-1078 Practice Areas: Criminal Law, Indian Law, Environmental/Water Law, Civil Litigation, Business Litigation
	Federal Trial Experience: Murder, Assault, Controlled Substances, White Collar Offenses, Sex Offenses, and other Felonies
	Federal Appellate Experience: Evidentiary Matters, Testimonial Privileges, Jurisdictional Claims, Sentencing Guidelines, Juvenile Transfers, Reclamation Law, and other substantive legal issues
	South Dakota State Court Trial and Appellate Experience Oglala Sioux Tribal Court Trial and Appellate Experience
May 2001 - Present	Special Assistant Attorney General, South Dakota Attorney General Pierre, South Dakota, (605) 773-3215 Felony Controlled Substance Prosecution in Western South Dakota
August 1995 - August 1997	Federal Law Clerk, Honorable Richard H. Battey U.S. District Court, District of South Dakota, Western Division Rapid City, South Dakota, (605) 343-7784
December 1994 - July 1995	Graduate Research Assistant, South Dakota State Commission of Engineering, Architectural & Land Surveying Examiners Rapid City, South Dakota, (605) 394-2510
Summer 1994	Law Clerk, Gunderson, Palmer, Goodsell & Nelson, LLP Rapid City, South Dakota, (605) 342-1078
Summer 1993	Law Clerk, Costello, Porter, Hill, Heisterkamp & Bushnell Rapid City, South Dakota, (605) 343-2410

GRADUATE EDUCATION

The University of South Dakota School of Law, Vermillion, South Dakota
Juris Doctorate, May 1995
Cumulative GPA 86.19%; Class Standing 8/67

UNDERGRADUATE EDUCATION

South Dakota School of Mines and Technology, Rapid City, South Dakota
Bachelor of Science in Electrical Engineering with Honors, May 1992
Cumulative GPA 3.44/4.00
Engineer-in-Training Certification, December 1992
Army ROTC Program, Spring 1988/Fall 1989
Eight Athletic Letters (Track/Cross Country)

BAR ADMISSIONS/ASSOCIATIONS

Bar Admissions:

United States Supreme Court, 1999 - Present
Federal Eighth Circuit Court of Appeals, 1998 - Present
Federal District Court for South Dakota, 1997 - Present
South Dakota State Court, 1995 - Present
Minnesota State Court, 1997 - Present
Oglala Sioux Tribal Court, 2004 - Present

South Dakota Bar Committees:

Criminal Pattern Jury Instruction Committee, 2001 - Present
Chairman, 2002 - Present
Criminal Law Committee, 2002-2004
Indian Law Committee, 1998-2000

South Dakota Trial Lawyers' Association, 1992 - Present

American Bar Association, 1996 - Present

POLITICAL SERVICE

Pennington County Director for President Bush 2004 Campaign
Pennington County State Central Committeeman, 2002 - Present
Pennington County Executive Committee, 2000 - Present
Pennington County Precinct Committeeman, 2002 - Present
Pennington County Ambassadors, past Chair
Pennington County Young Republicans, past Chair
Pennington/Meade County Delegate to State Conventions - Convention Parliamentarian, 2004
College Republicans
Teenage Republican Camp Counselor
Republican Election Monitor, 2002/2004: Pine Ridge, Porcupine, Interior, and Kyle

COMMUNITY ACTIVITIES

South Dakota School of Mines Foundation Board Trustee/Director
South Dakota School of Mines Foundation Nomination Committee Member
Chapel Valley Homeowners' Association Board Trustee, Vice-Chair
Black Hills Stockshow Foundation
Blessed Sacrament Catholic Church

PUBLISHED WORKS

State-by-State Guide to Architecture, Engineer, and Contractor Licensing

Aspen Law & Business, Aspen Publishers, Inc. 1998 (Chapter 44 - South Dakota)(supplements 1999-present)

Reclamation Law and the Belle Fourche Irrigation District: A Desperate Fight For a Way of Life in Times of Change, 40 S.D.L. Rev. 478 (1995)

Child Support Collection and Enforcement on Indian Reservations (1994), Manuscript on file in McKusick Law Library, University of South Dakota School of Law; (quoted by Catherine V. Piersol; *Child Support Enforcement in South Dakota: A Practitioners Guide*, 40 S.D. L. Rev. 393 (1995))

RACHEL K. PAULOSE

EMPLOYMENT

Interim United States Attorney (March, 2006 to present): District chief federal law enforcement officer.

United States Department of Justice (January, 2006 to present): Senior Counsel to Deputy Attorney General Paul J. McNulty and Special Counsel for Health Care Fraud. Portfolio includes supervision of Department's health care fraud policy as well as certain civil and criminal litigation.

Dorsey & Whitney (October, 2003 to December, 2005): Trial lawyer. Work included successful representation of Republican party in election lawsuit; defense of faith-based health care program; corporate litigation.

Williams & Connolly (October, 2002 to October, 2003): Business litigator. Work included defense against class action suit demanding slavery reparations; federal criminal and civil appeals; malpractice defense.

United States Attorney's Office (May, 1999 to September, 2002): Assistant United States Attorney prosecuting in District Court and defending in U.S. Court of Appeals federal civil and criminal cases; experience in affirmative civil enforcement, narcotics, violent crime, economic crime. Jury trial and Eighth Circuit appellate highlights included prosecution of first successful harboring case in District history; precedent-setting detention of suspect based on economic threat alone; precedent-setting appellate work rejecting expansion of alien criminal defendants' claims of rights under Vienna Convention.

United States Department of Justice (October, 1998 to May, 1999): Attorney General's Honors Program. Trial Attorney assigned to Civil Rights Division.

The Honorable James B. Loken, Chief Judge, United States Court of Appeals, Eighth Circuit (September, 1997 to September, 1998): Law Clerk.

EDUCATION

Yale Law School

J.D., June, 1997

Honors & Activities

Coker Fellow: Merit-based scholarship; Assistant in Instruction to Professor Kate Stith-Cabranes.

Yale Journal of Law & Feminism: Editor.

Yale Law Christian Fellowship: Board of Directors.

Asian American Students' Association: Board of Directors.

Westville Bible Chapel: Sunday School teacher.

University of Minnesota

B.A. *summa cum laude*, June, 1994 (double honors major: Political Science, History)

Honors & Activities

Phi Beta Kappa

Chair, Student Representatives to the Board of Regents

Harry S. Truman Scholar

Commencement Speaker

Scholarships: National Merit Commended Scholar; five merit-based national grants from corporations; five University-sponsored merit scholarships; Dean's List.

COMMUNITY ACTIVITIES

Federal Bar Association (2000 to present): Board of Directors, Minnesota Chapter; Eighth Circuit Vice President; Vice President for Monthly Meetings; Chair, Diversity Committee; Executive Committee.

Yale Law School Fund (1997 to 2005): Board of Directors.

Republican Party (1992 to 2005): Elected state, district, and county delegate; campaign volunteer.

National Asian Pacific American Bar Association (2003 to present): Board, Minnesota Chapter.

Harry S. Truman Scholarship Foundation (2000 to present): Scholarship Recipient Selection Panel Judge.

National Karate (1998 to present): brown belt.

Federalist Society (2001 to present)

ERIK C. PETERSON

EXPERIENCE

IOWA COUNTY DISTRICT ATTORNEY'S OFFICE 1999-Present
DISTRICT ATTORNEY

- Defeated 13 year Democratic incumbent to win election
- Serving fourth term as elected Republican District Attorney
- Lead Trial Attorney for Felony and Misdemeanor Trials
- Management Responsibility for Office of Six
- Public speaker at Schools and Civic Organizations
- Argued motions regarding search/seizure/identification/probable cause and many other issues on a daily basis
- Trained Law Enforcement officers both locally and nationally
- Acted as Special Prosecutor in Dane, Grant, Richland, Lafayette, Crawford and Vernon counties
- Created County Wide Truancy Intervention Plan
- Created County Wide Arson Task Force

RICHLAND COUNTY DISTRICT ATTORNEY'S OFFICE 1995-1998
ASSISTANT DISTRICT ATTORNEY

- Lead Attorney in Felony and Misdemeanor Trials
- Appellate Attorney for Misdemeanor matters
- Trained local Law Enforcement officers
- Prosecuted majority of Juvenile Offenders

EDUCATION

MARQUETTE UNIVERSITY LAW SCHOOL Milwaukee, Wisconsin 1995
Juris Doctoris

DRAKE UNIVERSITY Des Moines, Iowa 1992
Bachelor of Arts

HONORS

- **American Jurisprudence Award** – Legal Writing and Research 1993
- **Best Oral Advocate** – Klitzke Moot Court Competition 1994
- **GRADUATE** – National Advocacy Center – Trial Advocacy I & II 1999 & 2001

OTHER ACTIVITIES

- **Concordia College** (Madison, WI) – Constitutional Law Instructor 2000-2005
- **Iowa County Republican Party**, Chairman 2005

ADMITTED TO PRACTICE

- United States Supreme Court 2000
- United States District Court – Eastern & Western Districts of Wisconsin 1995
- State of Wisconsin 1995

DAG000000412

SHARON L. POTTER**PROFESSIONAL EXPERIENCE**

• **UNITED STATES ATTORNEY'S OFFICE**
Wheeling, West Virginia

Assistant United States Attorney
March 1992 - Present

Litigation/trial experience: all aspects of criminal & civil cases, including multi-jurisdictional case coordination, grand jury presentation, prosecution of telemarketing & securities fraud, money laundering, computer crime, tax, firearms, narcotics, criminal & civil asset forfeiture cases, victims' rights & restitution, and appellate advocacy

Awards/acknowledgments: 1997 Department of Justice Director's Award for Superior Performance; Department of Treasury Honorary Special Agent's Award; Northern District of W. Va. Computer Telecommunications Coordinator

Law enforcement/community coordination: Federal & State contact for "Weed and Seed" Initiative and equitable sharing of forfeited assets; selected speaker/instructor for various law enforcement seminars

• **BERKELEY COUNTY PROSECUTOR'S OFFICE**
Martinsburg, West Virginia

Assistant Prosecuting Attorney
April 1990 - February 1992

Litigation/trial experience: numerous trials including felony charges of kidnapping, rape, and burglary

• **MARTIN & SEIBERT, L.C.**
Martinsburg, West Virginia

Associate Attorney
January 1990 - February 1992

Litigation/trial experience: civil/administrative matters involving public utility law, including West Virginia Public Service Commission matters, and federal and state insurance defense litigation

• **CENTRE COUNTY DISTRICT ATTORNEY'S OFFICE**
Bellefonte, Pennsylvania

Assistant District Attorney
July 1987 - December 1989

Litigation/trial experience: numerous felony, misdemeanor & juvenile cases and appellate argument

• **WEST VIRGINIA PUBLIC SERVICE COMMISSION**
Charleston, West Virginia

Legal Counsel
June 1985 - June 1987

Litigation/experience: legal counsel for Commissioners - preparation of orders, decisions & legislation

OTHER EMPLOYMENT

• **KANAWHA COUNTY PROSECUTOR'S OFFICE**
Charleston, West Virginia

Legal Intern

• **SMITH BARNEY - HARRIS UPHAM, INC.**
Denver, Colorado

Sales Assistant

• **CONGRESSMAN ROBERT H. MICHEL**
Washington, D.C.

Congressional Intern

EDUCATION

CALIFORNIA WESTERN SCHOOL OF LAW San Diego, California

Juris Doctor • 1985

VANDERBILT UNIVERSITY Nashville, Tennessee

B.S. • Political Science • 1981

Deborah J. Rhodes

U.S. Department of Justice, Washington, D.C.

Counselor to the Assistant Attorney General, Criminal Division (2004 to Present)

- Advise the AAG on criminal policy, rules and legislation and develop and implement each, including the Department's response to the Supreme Court's decisions in Booker/Fanfan
- Represent the Department of Justice on the U. S. Sentencing Commission as the *ex officio* Commissioner
- Represent the Department of Justice on the Criminal Rules Advisory Committee of the Judicial Conference
- Supervise the Office of Policy and Legislation, which comments on legislation affecting the Criminal Division
- Represent the Department of Justice as a presenter at national sentencing conferences and training sponsored by the Judicial Conference, the Sentencing Commission, and professional associations
- Coordinate testimony for the Department of Justice before the Sentencing Commission and Congress
- Conduct nationwide training for the Department on sentencing issues
- Represent the Department of Justice on the ABA 's Criminal Justice Council and its committees

U.S. Attorney's Office, San Diego CA

Assistant U.S. Attorney (1990 to 2004)

Appellate Section (2000-2004) Acting Chief (Summer 2003)

- Supervised Appellate Section of four attorneys, six paralegals and support staff
- Wrote appellate briefs and argued them in the Ninth Circuit Court of Appeals
- Reviewed briefs written by Assistant U.S. Attorneys and conducted moot court arguments
- Evaluated adverse decisions and made recommendations to the Criminal Division concerning further review in the Ninth Circuit and Supreme Court
- Conducted office-wide training and provided legal advice to Assistants concerning motions, trial or appeal

Narcotics Enforcement Section (1990-1992; 1994-2000) Deputy Chief (1998-2000)

- Supervised senior attorneys; advised on all aspects of investigation and prosecution; evaluated performance
- Coordinated lengthy undercover, wiretap and grand jury investigations
- Prosecuted complex cases against major drug-trafficking organizations, including the Tijuana cartel
- Returned the first indictments against the Arellano brothers, leaders of the Tijuana cartel

Trial Unit (1992-94)

- Prosecuted a heavy case load of reactive crimes, including drug and immigration cases

U.S. Department of Justice, Organized Crime and Racketeering Section

Philadelphia Strike Force, Philadelphia PA

Trial Attorney (1987 to 1990)

- Conducted grand jury investigations and prosecuted high profile RICO and organized crime cases against associates of the Scarfo crime family and others in Pennsylvania, Delaware and Maryland

U.S. District Court, Judge J. William Ditter, Jr., Philadelphia PA

Law Clerk (1985 to 1987)

- Researched and wrote legal memoranda in criminal and civil cases, conducted civil discovery conferences

Bar Memberships

• State

- California
- Pennsylvania
- New Jersey

• Federal

- Southern District of California
- Eastern District of Pennsylvania
- Fourth Circuit
- Ninth Circuit

Rutgers University School of Law, Camden NJ (1982 to 1985)

- Juris Doctor with Honors (1985)
- Editor-in-Chief - Rutgers Law Journal (1984-85)
- Publication - Comment, Mueller v. Allen, 463 U.S. 388 (1983), 15 Rut. L. J. 231 (1984)
- Teaching Assistant - Research & Writing (1984)
- Corpus Juris Secundum Award - Outstanding Second Year Student (1984)
- Moot Court - Best Oral Argument (1983)
- American Jurisprudence Award - Highest grade in Contracts (1983)
- Research and Writing - Highest grade in section (1983)

Faith Christian School, Collingswood NJ (1980 to 1982)

Middle School Teacher

- Taught language arts, math, history and geography
- Coached softball

Wheaton College, Wheaton IL (1976 to 1980)

- Bachelor of Arts in Literature, Philosophy - High Honors (1980)
- Dean's List (1976-80)
- Literature Study Program at St. Anne's College, Oxford, England (1979)
- First Place Essay Contest - Kiwanis Club (1978)
- Preliminary Honors (1978)

Personal Interests

PROFILE
ROSA EMILIA RODRIGUEZ-VELEZ
FIRST ASSISTANT UNITED STATES ATTORNEY
DISTRICT OF PUERTO RICO

Educational Background

Ms. Rosa Emilia Rodríguez-Vélez graduated from the University of the Sacred Heart in 1973, and received her Juris Doctor Degree from the Interamerican University of Puerto Rico in 1977. She also holds a Masters Degree in Criminal Justice from the Interamerican University (*summa cum laude*).

Legal Background

Puerto Rico Department of Justice

In 1979, Ms. Rodríguez-Vélez was appointed by then Governor Carlos Romero-Barceló as Assistant District Attorney with the Puerto Rico Department of Justice. She tried numerous high profile cases as Assistant District Attorney and was assigned to a Specialized high profile Homicide courtroom for the last 2 years of her tenure. In 1987, she successfully prosecuted a member of the Macheteros organization charged with the murder of a federal witness. She held the position of Assistant District Attorney until 1988.

United States Attorney's Office for the District of Puerto Rico

1988-1994

In November 1988, Ms. Rodríguez-Vélez was named Assistant United States Attorney for the District of Puerto Rico. During this period she was assigned to the Criminal Division where she specialized in the prosecution of high profile drug trafficking, violent, and white collar crime cases including the carjacking-murder of José Jaime Pierluisi, Economic Advisor to Governor Pedro Rosselló.

1994-Present

Ms. Rodríguez-Vélez has held various management level positions at the United States Attorney's Office, and has been involved in the successful implementation of major initiatives to fight crime in Puerto Rico.

- **Violent Crime Coordinator for the District of Puerto Rico (1994-2002).** In this position she coordinated and implemented the district's successful Anti-Violent Crime Initiative which targeted violent gangs under the Violent Neighborhood Program.

- **HIDTA Coordinator (1994-1996).** Ms. Rodríguez-Vélez was actively involved in the preparation of the initial Puerto Rico/U.S. Virgin Islands Threat Assessment and Conceptual Strategy report. This report resulted in the designation of Puerto Rico and the U.S. Virgin Islands as a High Intensity Drug Trafficking Area in November 1994. She coordinated the state and federal multi-agency efforts to develop the budget and start-up phase of the PR/USVI HIDTA.
- **Executive Assistant U.S. Attorney (December 1994-July 2002).** She was appointed to this position in 1994. Her duties as EOUSA included the supervision of the Administrative Division, the coordination of various initiatives mentioned above, including the Law Enforcement Coordinating Committee, the PR/USVI HIDTA, and the Violent Crime Initiative. Ms. Rodríguez-Vélez was also in charge of all office security matters(DOSM), press and media coordination, and she was the office *liaison* for all communications with the Justice Department main branch in Washington, D.C., as well as with other federal law enforcement agencies. During this time, Ms. Rodríguez-Vélez continued to litigate high-profile criminal matters. She was also the Acting Chief of the White Collar Crime Litigation Unit and acted as the Administrative Officer for a period of 6 months.
- **Acting Chief Civil Division (December 1995-February 1997).** In her tenure as Acting Chief of the Civil Division, Ms. Rodríguez-Vélez supervised the work of the Assistant U.S. Attorneys assigned to the Civil Division. The Civil Division defends the United States in a variety of matters, among others, Federal Tort Claims Act cases, discrimination cases arising out of violations of federal statutes, and *Bivens* actions. The Civil Division's Affirmative Civil Enforcement (ACE) program also prosecutes financial matters, federal program fraud cases and asset forfeiture cases, among others. Of particular significance during this period, Ms. Rodríguez-Vélez established and implemented an initiative under the Americans with Disabilities Act to improve the accessibility of the Old San Juan historic district.
- **First Assistant U.S. Attorney (July 2002 - Present).** United States Attorney Humberto S. García promoted Ms. Rodríguez-Vélez to this position in July 2002. She currently supervises the Criminal, Civil, Appellate and Administrative Divisions of the United State Attorney's Office, District of Puerto Rico. She continues to try criminal cases, including the 2002 successful prosecution of the Kmart Corporation for Hurricane Georges related fraud charges.
- **Caribbean Corridor Initiative (CCI) (2005).** Ms. Rodríguez-Vélez is the Coordinator for this initiative which was started in February 2005 as a high seas interdiction effort to combat large scale drug smuggling from source countries like Colombia and Venezuela into the Eastern Caribbean. CCI has seized several ships and over 10,000 kilograms of cocaine and heroin destined for sale and consumption in Puerto Rico and the mainland United States.

- **Puerto Rico / Virgin Islands HIDTA Chair (June 2006).** Ms. Rodríguez-Vélez was elected chair of the HIDTA Executive Board on May 3, 2006. The HIDTA Executive Board is composed of heads of federal and local law enforcement agencies in Puerto Rico. Her term will start in June 2006.

Awards and Commendations

During her years of public service, Ms. Rodríguez-Vélez has received numerous awards and commendations from both the Puerto Rico and United States Departments of Justice, as well as from state and federal law enforcement agencies, including the Federal Bureau of Investigation's Director Commendation Letter, which she received in 1987.

CHUCK ROSENBERG

EDUCATION:

UNIVERSITY OF VIRGINIA

Charlottesville, Virginia. Juris Doctor, 1990.

HARVARD UNIVERSITY

Cambridge, Massachusetts. Master of Public Policy, 1985.

TUFTS UNIVERSITY

Medford, Massachusetts. Bachelor of Arts, 1982. *Magna Cum Laude*.

EXPERIENCE:

2/04-Pres. United States Department of Justice, Washington, D.C.
CHIEF OF STAFF TO THE DEPUTY ATTORNEY GENERAL

Chief of Staff to Deputy Attorney General Jim Comey, who serves as the chief operating officer of the Department of Justice. Responsibilities include daily management of his office, and of a professional staff of 20 individuals who oversee the operation of the Department and its components (including the Criminal, Civil, Tax, Antitrust, Civil Rights and Environment and Natural Resources Divisions, the FBI, DEA, U.S. Marshals, ATF, and all of the U.S. Attorney's offices throughout the nation), and coordination of office resources and support personnel. Handle numerous complex and sensitive legal, policy, ethical and personnel matters on behalf of the Deputy Attorney General, and work closely with him and the Attorney General on matters related to national security and criminal law enforcement.

7/03-2/04 United States Department of Justice, Washington, D.C.
COUNSELOR TO THE ATTORNEY GENERAL

Counselor to United States Attorney General John Ashcroft, responsible for legal and policy issues, including matters involving the National Security Council, the Central Intelligence Agency and the Department of Defense. Reported directly to the Attorney General daily regarding Department of Justice initiatives and efforts. Handled numerous sensitive matters on behalf of the Attorney General, including matters related to national security and criminal law enforcement. Attended regular meetings with the Attorney General, the Director of the FBI, and other agency heads, and monitored counterterrorism and national security initiatives for the Attorney General.

8/02-7/03 Federal Bureau of Investigation, Washington, D.C.
COUNSEL TO THE DIRECTOR

Counsel to FBI Director Robert Mueller, on counterterrorism, counterintelligence, and national security matters. Served as a liaison between the Director's Office and other FBI components, the Justice Department, the Central Intelligence Agency, the National Security Council, as well as other agencies and departments of the U.S. Government, handling sensitive matters on behalf of the Director. Represented the Director, and spoke on his behalf, at meetings and conferences.

10/00-8/02 Hunton & Williams, McLean, Virginia
COUNSEL

Conducted internal investigations for corporate clients. Litigated complex civil and criminal cases in state and federal court on behalf of individual and corporate clients.

10/91-10/00 United States Attorney's Office -- Eastern District of Virginia

(3/99-10/00) • CRIMINAL SUPERVISOR - Major Crimes Section, Alexandria, Virginia

Supervised Major Crimes Section attorneys, paralegals, and support staff, in prosecution of unit's cases, including espionage, murder, kidnapping, assault, bank robbery, counterfeiting, child pornography and immigration fraud. Responsible for intake, review of plea agreements, indictments, promulgation of office policies and operation of unit. Prosecuted full caseload.

(10/96-3/99) • ASSISTANT UNITED STATES ATTORNEY - Major Crimes Section, Alexandria, Virginia

Prosecuted numerous crimes in federal court, including kidnapping, murder and bank robbery. Responsible for all phases of investigation and prosecution: plea negotiations, grand jury investigation, indictment, pre-trial motions, trial, sentencing, post-trial proceedings and appeals. Briefed and argued numerous cases before the Fourth Circuit Court of Appeals.

(5/94-10/96) • ASSISTANT UNITED STATES ATTORNEY - Fraud Section, Norfolk, Virginia

Prosecuted myriad fraud offenses, including mail, wire, bankruptcy, credit card, tax and defense procurement fraud. Conducted complex white-collar fraud grand jury investigations as lead counsel.

(10/91-5/94) • SPECIAL ASSISTANT UNITED STATES ATTORNEY - Fraud Section, Alexandria, Virginia

Co-counseled extensive grand jury investigation that led to the indictment and conviction of three senior officials of the United Way of America. Assisted in the prosecution of Virginia fertility doctor Cecil Jacobson. Prosecuted various financial fraud crimes, including numerous criminal tax cases.

10/90-10/91 United States Department of Justice -- Tax Division, Washington, D.C.
TRIAL ATTORNEY - Northern Criminal Enforcement Section

Hired through the Attorney General's highly selective Honors Program. Prosecuted criminal tax and fraud cases in New York, Connecticut and Pennsylvania federal courts.

5/89-8/89 Willkie, Farr & Gallagher, Washington, D.C.
SUMMER ASSOCIATE - Permanent Offer Extended.

7/85-12/86 United States Representative Jim Moody, Washington, D.C.
LEGISLATIVE DIRECTOR

8/82-6/83 United States Representative Matthew McHugh, Washington, D.C.
LEGISLATIVE STAFF ASSISTANT

5/81-9/81 Cross Country Bicyclist

Organized and completed a 9500-mile bicycle trip around the United States, sponsored by Kiwanis International, which raised \$25,000 to support the Sidney Farber Cancer Institute.

DAG000000420

OTHER:

NBC News Analyst. Provided on-air commentary, as a paid legal analyst, on numerous NBC and MSNBC television shows, including *NBC Nightly News*, *The Today Show*, and *The Dan Abrams Report*. February – August 2002.

Guest Analyst. Provided on-air commentary on numerous national television shows, including *The NewsHour with Jim Lehrer* (PBS), *The Morning Show* (CBS), and *Fox and Friends* (Fox). December 2001 – February 2002.

Adjunct Professor, Criminal Law & Procedure and Evidence, The George Washington University, School of Forensic Science, Washington, D.C. 1997-2002.

Guest Lecturer/Instructor, FBI Academy, Quantico, Virginia.

Member, Board of Directors, Arlington Little League.

Coach, Arlington Little League; Arlington County Youth Basketball.

NOTEWORTHY CASES AS A FEDERAL PROSECUTOR:

United States v. Charles Thomas Dickerson: The Supreme Court, in *Dickerson v. United States*, 530 U.S. 428 (2000), held Congress could not set aside the constitutional rule announced in *Miranda*, reversing the Fourth Circuit and suppressing a voluntary post-arrest statement made by Dickerson to police. Dickerson was later convicted at trial, *sans* statement, on charges of bank robbery and conspiracy.

United States v. Christopher Andaryl Wills: Following dismissal of an indictment charging Wills with kidnapping and murder, the Fourth Circuit, in a case of first impression, reinstated the capital charge. The Court held, in conflict with another circuit, that federal jurisdiction is established under the kidnapping statute when a victim, unaccompanied by a defendant, is lured across a state line. *United States v. Wills*, 237 F.3d 174 (4th Cir. 2000). Wills was convicted at trial, and is serving a life sentence.

United States v. Aldrich Hazen Ames: Following Ames's guilty plea to espionage and his sentence of life imprisonment, the District Court ruled that his subsequent collateral attack on the conviction was not timely filed. The Fourth Circuit agreed and dismissed his appeal in *United States v. Ames*, 230 F.3d 1354 (4th Cir. 2000, unpublished).

United States v. Terence Earl Davis: Following conviction at trial for drug dealing and a drive-by shooting, the Fourth Circuit, in a case of first impression, affirmed the conviction, holding that Davis's discharge of a gun involved use of an "explosive" (the gunpowder necessary to propel the ammunition) within the meaning of the Sentencing Guidelines. *United States v. Davis*, 202 F.3d 212 (4th Cir. 2000).

United States v. David Sheldon Boone: Prosecuted and convicted former NSA crypto analyst for conspiracy to commit espionage, for selling top-secret documents to the KGB, and its successor, the SVRR, including information that detailed U.S. targeting of tactical nuclear weapons and our military's use of signals intelligence. Boone was sentenced to more than 24 years in prison. (1998).

United States v. James Culpepper Pebworth: Following conviction at trial for passing forged checks, the Fourth Circuit, in a case of first impression, affirmed the conviction, holding that the negotiated checks of a defunct corporation drawn on a defunct bank were nevertheless "implements ... particularly suited for making ... a forged security." *United States v. Pebworth*, 112 F.3d 168 (4th Cir. 1997).

United Way of America Investigation: Co-counseled an extensive grand jury investigation that examined the financial misconduct of senior Alexandria, Virginia-based United Way of America officials, including its former President and CEO, William Aramony, and that culminated in the indictment and conviction of Aramony and two others on charges of conspiracy, mail and tax fraud, and money laundering. (1992-1995).

BRETT L. TOLMAN

EXPERIENCE

CHIEF COUNSEL FOR CRIME AND TERRORISM (2004-PRESENT)

UNITED STATES SENATE, JUDICIARY COMMITTEE, CHAIRMAN ARLEN SPECTER

Responsible for supervising and coordinating the work of several counsels, law clerks, legislative assistants and interns on issues such as Crime, Terrorism, National Security, DNA, Habeas reform, BRAC Military Closures, ID Fraud, Copyright Infringement, National Security, and Domestic Drug Policy. Assisted in confirmation hearings of Supreme Court Justices and nominees for the Department of Justice including the Attorney General and several Associate Attorneys General.

Responsible for drafting and negotiating passage of the USA PATRIOT Improvement and Reauthorization Act of 2005 out of Committee by a vote of 18-0 and off the Senate floor by unanimous consent. Led negotiations on the Violence Against Women Act which the President signed into law on January 5, 2006.

Honored in the April 9, 2005 Issue of *National Journal* as one of the "Hill 100" most influential staffers on Capitol Hill.

COUNSEL TO CHAIRMAN ORRIN HATCH, UNITED STATES SENATE, JUDICIARY COMMITTEE, (2003-2004)

Lead Counsel and Advisor to Chairman Orrin Hatch on several Civil, Criminal, and Administrative legal issues. Responsible for drafting and negotiating key compromises with the House Judiciary Committee on the DNA Bill which became law on October 9, 2004. Handled Committee issues such as CJS Appropriations, oversight hearings on PATRIOT Act, GTMO detainees, Consumer Fraud, Copyright Infringement, and oversight of DOJ, DHS, and FBI.

ASSISTANT UNITED STATES ATTORNEY, UNITED STATES DEPT. OF JUSTICE, DIST. OF UTAH (2000-PRESENT)

CHIEF, VIOLENT CRIME AND FIREARM UNIT

Supervised a team of a dozen attorneys and paralegals. Implemented strategies to more effectively prosecute over 1,000 federal cases. Lead counsel in hundreds of federal felony cases, including white-collar, violent and drug crimes. Argued several cases before the Tenth Circuit—including *US v. Bayles*, a leading case on constitutionality of federal gun laws.

Coordinated the gun-violence reduction program: Project Safe Neighborhoods. Managed task force of over 100 federal, state, and local partners. Trained thousands of state law enforcement officers and managed over \$2 million for community outreach programs, making Utah a national leader in combating gun violence.

LAW CLERK, HONORABLE CHIEF JUDGE DEE BENSON, UNITED STATES DISTRICT COURT, UTAH (1998-2000)

Researched and drafted opinions, legal memoranda, memos and orders in Federal civil and criminal cases.

LITIGATION AND APPELLATE ASSOCIATE, RICHARDS, BRANDT, MILLER & NELSON, SLC, UTAH (SUMMER 1997)

Drafted legal briefs and conducted discovery involving Constitutional issues, medical malpractice, contract and tort law.

EDUCATION

JURIS DOCTOR, J. REUBEN CLARK LAW SCHOOL, BRIGHAM YOUNG UNIVERSITY (1995-1998)

CUM LAUDE

LAW REVIEW Board, Lead Editor (1996-98)

Recipient of High Grade Awards in Constitutional Law, Supreme Court, and Legal Writing & Research

BACHELOR OF ARTS, BRIGHAM YOUNG UNIVERSITY (1994)

DISTINCTIONS

CLEARANCE LEVEL: TS-SCI

UNITED STATES ATTORNEY GENERAL'S AWARD (2001)

UNITED STATES ATTORNEY'S AWARD (2002)

MEMBER OF ARIZONA AND UTAH BARS; WASHINGTON D.C. BAR PENDING

COMPETITOR IN *SEA-2-SUMMIT* ECO-CHALLENGE RACE (2000)

DAG000000422

JOHN FREDERICK WOOD

EXPERIENCE

U.S. DEPARTMENT OF HOMELAND SECURITY, Washington, D.C. Feb. 2005-Nov. 2006
Chief of Staff. Served as Chief of Staff for a department with 180,000 employees and a \$40 billion budget. Assisted and advised the Secretary of Homeland Security on all matters involving the Department, including terrorism, intelligence, border security, immigration, law enforcement, preparedness, response, recovery, personnel, and management issues. Oversaw the Secretary's staff, the Executive Secretariat, the Senior Military Advisor's Office, and the Office of Scheduling and Advance. Ensured coordination among departmental components.

U.S. DEPARTMENT OF JUSTICE, Washington, D.C. July 2003-February 2005
Counselor to the Attorney General. Advised the Attorney General on all matters related to the Civil, Civil Rights, Antitrust, Tax, and Environment Divisions of the Department. Participated in daily meetings with the Attorney General regarding major matters throughout the Department. Oversaw and coordinated the Department's civil litigation regarding the government's antiterrorism efforts. Argued three cases in the U.S. Courts of Appeals.

EXECUTIVE OFFICE OF THE PRESIDENT, Washington, D.C. April 2002-July 2003
Deputy General Counsel, Office of Management and Budget. Participated in the development of major legislative, regulatory, management, and appropriations initiatives. Drafted legislation and regulations. Reviewed the federal government's major civil litigation.

U.S. DEPARTMENT OF JUSTICE, Washington, D.C. March 2001-April 2002
Deputy Associate Attorney General, Counsel to the Associate Attorney General. Participated in oversight of the Department's five civil litigating divisions. Developed strategies and edited briefs for major civil cases. Drafted a major rulemaking.

KIRKLAND & ELLIS, Washington, D.C. October 1998-March 2001
Associate. Engaged in virtually all aspects of commercial litigation and appellate practice, with particular emphasis upon brief writing and developing legal arguments.

JUSTICE CLARENCE THOMAS, Washington, D.C. July 1997-July 1998
SUPREME COURT OF THE UNITED STATES. *Law Clerk*.

JUDGE J. MICHAEL LUTTIG, McLean, VA. July 1996-July 1997
UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT. *Law Clerk*.

BRYAN CAVE LLP, St. Louis, MO. Summer 1995
Summer Associate.

ARMSTRONG, TEASDALE, SCHLAFLY & DAVIS, St. Louis, MO. Summer 1994
Summer Associate.

SENATOR JOHN C. DANFORTH, Washington, DC. August 1992-July 1993
Legislative Correspondent. Researched and wrote memoranda for the Senator and his legislative aides and responded to constituent mail and inquiries regarding economic issues.

EDUCATION

HARVARD LAW SCHOOL, J.D., *magna cum laude*, 1996.
HARVARD LAW REVIEW, *Articles Chair*.

UNIVERSITY OF VIRGINIA, B.A. with Honors, 1992.
Major in Government & Foreign Affairs; Minor in Economics. Phi Beta Kappa.

Elston, Michael (ODAG)

From: Elston, Michael (ODAG)
Sent: Tuesday, February 28, 2006 10:05 PM
To: Charlton, Paul (USAAZ)
Cc: Mercer, Bill (ODAG)
Subject: Interview Policy

Paul:

At your request, I am writing to describe the Acting DAG's decision that we discussed earlier this evening.

As you and Paul discussed in Orlando yesterday, we recently learned of your intention to implement a policy requiring federal law enforcement agents in your district to videotape interviews. That policy was set to take effect March 1. After hearing concerns that the policy did not undergo any inter-agency review and that the policy would have an impact on other districts, the Acting DAG and his staff reviewed the policy. He has also considered the concerns you raised directly with him, and he agrees with you that this issue needs serious and expeditious study and consideration.

Based on that review and the concerns expressed, the Acting DAG has decided to delay implementation of that policy to allow for a thorough Departmental and inter-agency review. Further, the Acting DAG is very interested in having you submit a proposal to have a pilot program in your district. Such a proposal would receive expeditious consideration.

Paul understands this issue and is interested in energizing the Department's consideration of it. You are the best advocate for the proposed policy, and he hopes you will play a significant role in the Department's review and the inter-agency review process.

Thanks,
Mike

Elston, Michael (ODAG)

From: Mercer, Bill (ODAG)
Sent: Tuesday, February 28, 2006 10:16 AM
To: Elston, Michael (ODAG)
Subject: Charlton discussion

I gather that the DAG and Paul started to talk, but didn't finish the conversation. Charlton will be in DC to testify tomorrow. Could we get him penciled in for a mtg today or tomorrow? His policy is scheduled to take effect tomorrow.

Sent from my BlackBerry Wireless Handheld

Elston, Michael (ODAG)

From: Elston, Michael (ODAG)
Sent: Friday, March 31, 2006 11:17 PM
To: Margolis, David
Cc: Mercer, Bill (ODAG)
Subject: FW: San Francisco Press Release

Importance: High

Attachments: tmp.htm; DOJ_clr_sm.gif; ole1.bmp; Steroid Guidelines Chart.wpd



tmp.htm (16 KB) DOJ_clr_sm.gif (15 KB) ole1.bmp (6 KB) Steroid Guidelines Chart.wpd (...)

David:

For your NDCA file. I have not received a response.

Mike

-----Original Message-----

From: Elston, Michael (ODAG)
Sent: Wednesday, March 29, 2006 12:55 PM
To: Ryan, Kevin (USACAN)
Cc: Mercer, Bill (ODAG); Roehrkasse, Brian
Subject: FW: San Francisco Press Release
Importance: High

Kevin:

Not sure that this was particularly helpful. I have already quashed DEA's effort to issue a press release on this subject at this time -- it is my judgment, as the Department's ex officio Commissioner, that this kind of thing actually harms our ability to ensure that the emergency amendment will become the permanent amendment. After our conversations, I am fairly surprised that you would not consult with me or anyone else in Main Justice before issuing a press release on something that has nothing to do with your office.

Please don't do anything further in this area without consultation.

Thanks,
Mike

-----Original Message-----

From: Roehrkasse, Brian
Sent: Wednesday, March 29, 2006 9:43 AM
To: Elston, Michael (ODAG)
Cc: Mercer, Bill (ODAG)
Subject: FW: San Francisco Press Release
Importance: High

-----Original Message-----

From: Smith, Kimberly A
Sent: Wednesday, March 29, 2006 9:29 AM
To: Roehrkasse, Brian
Cc: Wade, Drew; Lesch, Jaclyn
Subject: San Francisco Press Release
Importance: High

Brian-
Attached is the San Francisco Press release.

FROM LUKE MACAULAY (USAO PIO):

Kim,

We did issue a release. We kept it very factual and based it almost entirely upon what was posted on the USSC's website (www.ussc.gov).

United States Attorney Kevin V. Ryan
Northern District of California

FOR IMMEDIATE RELEASE
CONTACT: Luke Macaulay
March 24, 2006
(415) 436-6757

WWW.USDOJ.GOV/USAO/CAN <<http://www.usdoj.gov/USAO/CAN>>
Luke.Macaulay@usdoj.gov

SENTENCING COMMISSION ANNOUNCES STRICTER PENALTIES
FOR STEROID OFFENSES

Today, the United States Sentencing Commission enacted a temporary emergency amendment to increase the penalties for offenses involving anabolic steroids. The amendment to the sentencing guidelines provides stiffer penalties for steroids related offenses, and adds sentencing enhancements for individuals using masking agents to prevent the detection of steroids and for those who are distributing steroids to athletes. Finally, the amendment also provides a further sentencing enhancement for a defendant who used his or her position as a coach to influence an athlete to use an anabolic steroid.

U.S. Attorney Kevin V. Ryan stated, "We are pleased that the Sentencing Commission has taken this action to impose penalties for steroid offenses that reflect the seriousness of the crimes. Previous penalties required 50 steroid pills to equal one pill of another Schedule III drug, such as Vicodin. With this temporary amendment, steroids will carry the same penalties as other Schedule III drugs, and penalties will be enhanced for using masking agents, for a coach distributing steroids to his athletes, and for distributing steroids to athletes. We are hopeful that these enhanced penalties will help deter anabolic steroid trafficking and abuse."

According to the Commission, these sentencing enhancements address congressional concern with distribution of anabolic steroids to athletes, particularly the impact that steroids distribution and steroids use has on the integrity of sport, either because of the unfair advantage gained by the use of steroids or because of the concealment of such use.

The Commission notes in its 2006 Steroids Report that research has revealed that steroids are now considered potentially addictive, with documented withdrawal symptoms, and are capable of being more widely distributed than before through the use of the Internet and involve international sources.

In 2004, Congress passed the Anabolic Steroid Control Act, which directed the Commission to "review the Federal sentencing guidelines with respect to offenses involving anabolic steroids" and "consider amending the...guidelines to provide for increased penalties with respect to offenses involving anabolic steroids in a manner that reflects the seriousness of such offenses and the need to deter anabolic steroid trafficking and use...."

Further Information:

The text of the emergency amendment to the steroids sentencing guidelines is available at www.ussc.gov <outhind://56/www.ussc.gov> .

Further information about the BALCO prosecution is available at:
http://www.usdoj.gov/usao/can/press/html/2005_10_18_balco_sentencing.htm

All press inquiries to the U.S. Attorney's Office should be directed to Luke Macaulay at (415) 436-6757 or by email at Luke.Macaulay@usdoj.gov.

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US SENTENCING GUIDELINES

**SECTION 2D1.1(C), NOTES F & G
SCHEDULE III DRUGS**

PRIOR TO 03/27/06

NON-STEROIDS:

1 PILL = 1 UNIT =

**0.5 MILLILITER = 1 UNIT =
(INJECTABLE LIQUID)**

STEROIDS:

**50 PILLS
(1/50 RATIO)**

**10 MILLILITERS
(1/20 RATIO)**

AFTER 03/27/06

NON-STEROIDS:

1 PILL = 1 UNIT =

**0.5 MILLILITER = 1 UNIT =
(INJECTABLE LIQUID)**

STEROIDS:

**1 PILL
(1/1 RATIO)**

**0.5 MILLILITERS
(1/1 RATIO)**

ADDITIONAL NEW GUIDELINE LANGUAGE:

2D1.1(c)(F) – Notes to Drug Quantity Table – For an anabolic steroid that is not a pill, capsule, tablet, or liquid form (e.g., patch, topical cream, aerosol), the court shall determine the base offense level using a reasonable estimate of the anabolic steroid used in the offense. In making a reasonable estimate, the court shall consider that each 25 mg of anabolic steroid is one “unit.”

ADDITIONAL NEW GUIDELINE ENHANCEMENTS:

+2 LEVELS – 2D1.1(b)(6) – Steroid Distribution Involved the Use of a MASKING AGENT

+2 LEVELS – 2D1.1(b)(7) – Defendant Distributed Steroids to an ATHLETE

ADDITIONAL NEW APPLICATION NOTES:

2D1.1 Application Note Commentary – MASKING AGENT – a substance that, when taken before, after, or in conjunction with an anabolic steroid, prevents the detection of the anabolic steroid in an individual’s body.

2D1.1 Application Note Commentary – ATHLETE – an individual who participates in an athletic activity conducted by (i) an intercollegiate athletic association or interscholastic athletic association; (ii) a professional athletic association; or (iii) an amateur athletic association.

2D1.1 Application Note Commentary – ABUSE OF POSITION OF TRUST – an adjustment ordinarily would apply under 3B1.3 in the case of a defendant who used his position as a coach to influence an athlete to use an anabolic steroid.

Elston, Michael (ODAG)

From: Elston, Michael (ODAG)
Sent: Tuesday, April 04, 2006 9:49 PM
To: Mercer, Bill (ODAG); Otis, Lee L; Mercer, Bill (USAMT)
Subject: Re: TPs on Issa's Catch-and-Release question

The meeting did not occur b/c the CA delegation could not coordinate their schedules. DAG has always been and remains willing to do this meeting.

-----Original Message-----

From: Mercer, Bill (ODAG)
To: Otis, Lee L; Mercer, Bill (USAMT)
CC: Elston, Michael (ODAG)
Sent: Tue Apr 04 21:47:24 2006
Subject: Re: TPs on Issa's Catch-and-Release question

I will look at this tonight. I'm quite sure that OLA offered a member briefing with Issa and the California Republicans. Not sure why it didn't happen. Logistics, I believe.

The calls -- if authorized by the DAG -- are designed to tell each USA of the need to do more prosecutions of illegal aliens -- agg felons and the other classes of illegal aliens that we have discussed in the past. We don't want to call it an "initiative" or a "priority".

Sent from my BlackBerry Wireless Handheld

-----Original Message-----

From: Otis, Lee L
To: Mercer, Bill (ODAG); Mercer, Bill (USAMT)
CC: Elston, Michael (ODAG)
Sent: Tue Apr 04 20:27:33 2006
Subject: FW: TPs on Issa's Catch-and-Release question

Congressman Issa has indicated he intends to ask the AG a question about this letter at the HJC hearing on Thursday. You will remember that this letter had come in shortly after I arrived. The plan was to offer a briefing with the then-Acting DAG. Leg Affairs was never able to get that scheduled, I assume primarily because of difficulties on the Congressman's end, although they are now looking at scheduling it after the Easter recess. Here are some talking points that Ryan has drafted for the AG to use in responding to such a question. They look good to me, especially given the nature of the issue, but I thought I should run them by you as well.

I saw on the matrix that you sent around that there are a number of references to potential communications with the US Atties on this general issue. Wasn't sure who was supposed to be in charge of those but whoever that is should perhaps also get a copy of these.

I think these need to go to the AG tomorrow morning.

From: Bounds, Ryan W (OLP)
Sent: Tuesday, April 04, 2006 8:13 PM
To: Seidel, Rebecca; Otis, Lee L
Subject: TPs on Issa's Catch-and-Release question
Importance: High

See attached.

Ryan W. Bounds
Chief of Staff and Senior Counsel
Office of Legal Policy, DOJ
W: 202/305-4870
M: 202/532-5121
F: 202/514-1731

Elston, Michael (ODAG)

From: Connor, Mark
Sent: Tuesday, April 11, 2006 6:14 PM
To: Mercer, Bill (ODAG)
Cc: Elston, Michael (ODAG)
Subject: Fw: LA Proposal

Bill: This is the full court press we anticipated from McKay and the NCIS/LInX team. FYI, McWeeney is the President of CSM, a private contractor who stands to benefit from the proposed recommendations. MAC

-----Original Message-----

From: Connor, Mark <Mark.Connor@SMOJMD.USDOJ.gov>
To: Duffy, Michael (OCIO) <Michael.Duffy@SMOJMD.USDOJ.gov>; Watkins, Harrell <Harrell.Watkins@SMOJMD.USDOJ.gov>; Warren, Jeremy <Jeremy.Warren@SMOJMD.USDOJ.gov>
CC: 'r.scott.crabtree@ic.fbi.gov' <r.scott.crabtree@ic.fbi.gov>; Hitch, Vance (OCIO) <Vance.Hitch@SMOJMD.USDOJ.gov>
Sent: Tue Apr 11 18:07:46 2006
Subject: Re: LA Proposal

All: This is a full court press by McKay, CSM, and LInX (NCIS). McKay and the LInX team are providing a demo and recommendations to the DAG tomorrow. I have communicated some concerns re the McKay/NCIS proposals to the DAG, PADAG, and Chief of Staff. I have also recommended the DAG meet with OCIO and me next week to discuss the recommendations. I do not envision the DAG endorsing the recommendations this week. I think we need to be prepared to discuss details next week. MAC

-----Original Message-----

From: Duffy, Michael (OCIO) <Michael.Duffy@SMOJMD.USDOJ.gov>
To: Watkins, Harrell <Harrell.Watkins@SMOJMD.USDOJ.gov>; Warren, Jeremy <Jeremy.Warren@SMOJMD.USDOJ.gov>; Connor, Mark <Mark.Connor@SMOJMD.USDOJ.gov>
CC: 'R.Scott.Crabtree@ic.fbi.gov' <R.Scott.Crabtree@ic.fbi.gov>; Hitch, Vance (OCIO) <Vance.Hitch@SMOJMD.USDOJ.gov>
Sent: Tue Apr 11 17:58:33 2006
Subject: Fw: LA Proposal

Harrell: What does this say?

All: If this is contrary to OneDOJ strategy (LInX front porch), then I recommend you get a hold of Scott Crabtree and ask him to contact LA FO to clarify DOJ strategy. MDD

-----Original Message-----

From: Hitch, Vance (OCIO) <Vance.Hitch@SMOJMD.USDOJ.gov>
To: Duffy, Michael (OCIO) <Michael.Duffy@SMOJMD.USDOJ.gov>; Warren, Jeremy <Jeremy.Warren@SMOJMD.USDOJ.gov>
Sent: Tue Apr 11 12:17:10 2006
Subject: FW: LA Proposal

fyi

-----Original Message-----

From: tgm@csmweb.com [mailto:tgm@csmweb.com]
Sent: Tuesday, April 11, 2006 12:04 PM
To: Hitch, Vance (OCIO); Elston, Michael (ODAG); Mercer, Bill (ODAG)
Cc: McKay, John (USAWAW); tgm@csmweb.com

Subject: LA Proposal

John McKay asked that I forward to you Deb Yang's Linx proposal for LA. She will be briefing it at tonorrow's meeting. The LA Chiefs and the FBI ADIC strongly endorsed the project last week.

Tom McWeeney

Elston, Michael (ODAG)

From: Elston, Michael (ODAG)
Sent: Thursday, May 18, 2006 4:39 PM
To: Otis, Lee L
Subject: Re: AP - Report says Border Patrol demoralized by lack of smuggling prosecutions

I meant Courtney.

-----Original Message-----

From: Elston, Michael (ODAG)
To: Otis, Lee L
Sent: Thu May 18 16:38:10 2006
Subject: Re: AP - Report says Border Patrol demoralized by lack of smuggling prosecutions

All plus Tasia, Mercer and the DAG.

-----Original Message-----

From: Otis, Lee L
To: Elston, Michael (ODAG)
Sent: Thu May 18 16:10:09 2006
Subject: FW: AP - Report says Border Patrol demoralized by lack of smuggling prosecutions

should we send this to Jeff, Kyle, or Tasia?

-----Original Message-----

From: Seidel, Rebecca
Sent: Thursday, May 18, 2006 3:51 PM
To: Roberts, Tom; Koehler, Joe (USAAZ); McHenry, Teresa; Morton, John (USAVAE); Campbell, Benton; Crews, John (USAEO)
Cc: Bounds, Ryan W (OLP); Otis, Lee L; Iglesias, David C. (USANM); Voris, Natalie (USAEO); Roland, Sarah E; Warwick, Brian
Subject: FW: AP - Report says Border Patrol demoralized by lack of smuggling prosecutions

see below story, we are going to need to ensure that you David have enough info to respond to questions you may get on this. We need to respond with our good prosecution numbers, and also, verify if the below is wrong or correct?

From: White House News Update [mailto:News.Update@WhiteHouse.Gov]
Sent: Thursday, May 18, 2006 3:16 PM
To: Ho, Allyson N.
Subject: AP - Report says Border Patrol demoralized by lack of smuggling prosecutions

Report says Border Patrol demoralized by lack of smuggling prosecutions

By ELLIOT SPAGAT

SAN DIEGO (AP) The vast majority of people caught smuggling immigrants across the border near San Diego are never prosecuted for the offense, demoralizing the Border Patrol agents making the arrests, according to an internal document obtained by The Associated Press.

``It is very difficult to keep agents' morale up when the laws they were told to uphold are being watered-down or not prosecuted,' ' the report says.

The report offers a stark assessment of the situation at a Border Patrol

station responsible for guarding 13 miles of mountainous border east of the city. Federal officials say it reflects a reality along the entire 2,000-mile border: Judges and federal attorneys are so swamped that only the most egregious smuggling cases are prosecuted.

Only 6 percent of 289 suspected immigrant smugglers were prosecuted by the federal government for that offense in the year ending in September 2004, according to the report. Some were instead prosecuted for another crime. Other cases were declined by federal prosecutors, or the suspect was released by the Border Patrol.

The report raises doubts about the value of tightening security along the Mexican border. President Bush wants to hire 6,000 more Border Patrol agents and dispatch up to 6,000 National Guardsmen. He did not mention overburdened courts in his Oval Office address Monday on immigration.

The report was provided to the AP by the office of Rep. Darrell Issa, R-Calif., who has accused the chief federal prosecutor in San Diego of being lax on smuggling cases. Issa's office said it was an internal Border Patrol report written last August. It was unclear who wrote it.

The lack of prosecutions is "demoralizing the agents and making a joke out of our system of justice," said T.J. Bonner, president of the National Border Patrol Council, which represents agents. "It is certainly a weak link in our immigration-enforcement chain."

The 41-page report says federal prosecutors in San Diego typically prosecute smugglers who commit "dangerous/violent activity" or guide at least 12 illegal immigrants across the border. But other smugglers know they are only going to get "slapped on the wrist," according to the report.

The report cites a 19-year-old U.S. citizen caught three times in a two-week period in 2004 trying to sneak people from Tijuana, Mexico, to San Diego in his car trunk, two at a time.

"This is an example of a kid who knows the system," the report says. "What is true is that he will probably never be prosecuted if he only smuggles only one or two bodies at a time."

The report also cites a Mexican citizen who was caught in Arizona and California driving with illegal immigrants and was released each time to Mexico. He was prosecuted the fourth time, when two illegal immigrants in his van died in a crash, and sentenced to five years in prison.

U.S. Attorney Carol Lam in San Diego said about half her 110 attorneys work on border cases in an area where the Border Patrol made nearly 140,000 arrests last year. She said she gives highest priority to the most serious cases, including suspects with long histories of violent crime or offenders who endanger others' lives.

"We figure out how many cases our office can handle, start from the worst and work our way down," she said.

Lam said many suspected migrant smugglers are prosecuted instead for re-entering the country after being deported, a crime that can be proved with documents. Smuggling cases are more difficult to prosecute because they require witnesses to testify.

The Border Patrol, which would neither confirm nor deny the document's authenticity, said prosecutors in San Diego recently agreed to prosecute a Top 20 list of smugglers if they are caught.

The Justice Department in Washington declined to comment. However, at a congressional hearing last month, Rep. Ric Keller, R-Fla., told Attorney General Alberto Gonzales that Lam's record on migrant smuggling was "a

pathetic failure.'" Gonzales replied that he was urging U.S. attorneys to more actively enforce laws but noted that immigration cases were ``a tremendous strain and burden'' along the border.

Peter Nunez, a former U.S. attorney in San Diego, said prosecutors along the border struggle with limited resources and a huge caseload of immigration cases.

``This is not an indictment of the U.S. Attorney's Office, because you have to deal with the realities of the caseload, but it is an indictment of how badly Congress and presidents have handled the immigration system,'' he said.

The report says immigrants in the area paid an average of \$1,398 to be guided across the border in 2004.

``Smugglers are making lots of money breaking the immigration laws, and there is not much incentive for them to stop these illegal activities,'' it says. ``The smugglers know that even if they are caught, it will be difficult to punish them.''

Elston, Michael (ODAG)

From: Otis, Lee L
Sent: Tuesday, May 23, 2006 8:10 PM
To: Tenpas, Ronald J (ODAG); Mercer, Bill (ODAG); Elston, Michael (ODAG)
Subject: FW: Border patrol report /Carol Lam

FYI re: Ron's note about Carol Lam

-----Original Message-----

From: Otis, Lee L
Sent: Tuesday, May 23, 2006 7:22 PM
To: Fridman, Daniel (ODAG)
Subject: Border patrol report

I have not seen the underlying report. This is about a statement that the US Attorney's office issued yesterday responding to Issa about this.

Also FYI, looking at the AOUSC data, the New Mexico smuggling prosecution numbers seem to be down a little from 04 to 05, as are the overall immig numbers, although not by very much at all in the case of the latter and the former seem to fluctuate a bit more.

-----Original Message-----

From: Smith, Kimberly A
Sent: Tuesday, May 23, 2006 4:12 PM
To: Seidel, Rebecca; Roehrkasse, Brian
Cc: Voris, Natalie (USAEO); Otis, Lee L; Bounds, Ryan W (OLP)
Subject: RE: Urgent Report (Border Patrol Report-CNN Coverage);

Sounds good. I will tell their office they can send this out.

-----Original Message-----

From: Seidel, Rebecca
Sent: Tuesday, May 23, 2006 4:09 PM
To: Smith, Kimberly A; Roehrkasse, Brian
Cc: Voris, Natalie (USAEO); Otis, Lee L; Bounds, Ryan W (OLP)
Subject: RE: Urgent Report (Border Patrol Report-CNN Coverage);

re attaching stmt USA Lam issued so Ryan and Lee can see.
While we would have liked to have had heads up before she issued it, I don't see any problems with it.

-----Original Message-----

From: Smith, Kimberly A
Sent: Tuesday, May 23, 2006 3:55 PM
To: Roehrkasse, Brian; Seidel, Rebecca
Cc: Voris, Natalie (USAEO)
Subject: RE: Urgent Report (Border Patrol Report-CNN Coverage)

Correct, the USAO gave it to CNN over the phone last night--it was not an official statement that was blasted out.

-----Original Message-----

From: Roehrkasse, Brian
Sent: Tuesday, May 23, 2006 3:52 PM
To: Smith, Kimberly A; Seidel, Rebecca
Cc: Voris, Natalie (USAEO)
Subject: RE: Urgent Report (Border Patrol Report-CNN Coverage)

They already released it, right? I don't think we can not give them the statement we already released.

-----Original Message-----

From: Smith, Kimberly A

Sent: Tuesday, May 23, 2006 3:51 PM
To: Seidel, Rebecca; Roehrkasse, Brian
Cc: Voris, Natalie (USAEO)
Subject: RE: Urgent Report (Border Patrol Report-CNN Coverage)

Rebecca-

The reporter is calling now wanting to know about the statement. If I don't hear back from OLA by 4:30pm, we are just going to go with the original statement from SDCA.

Thanks,
Kim

-----Original Message-----

From: Seidel, Rebecca
Sent: Tuesday, May 23, 2006 11:30 AM
To: Smith, Kimberly A; Roehrkasse, Brian
Cc: Voris, Natalie (USAEO)
Subject: Re: Urgent Report (Border Patrol Report-CNN Coverage)

Brian, we should loop in WH press too. I will loop in WH leg.
I will be back in my office this afternoon, can we wait a little?

-----Original Message-----

From: Smith, Kimberly A
To: Seidel, Rebecca; Roehrkasse, Brian
CC: Voris, Natalie (USAEO)
Sent: Tue May 23 11:26:54 2006
Subject: RE: Urgent Report (Border Patrol Report-CNN Coverage)

While we are on the subject, Federal Times just called a few minutes ago about this same Issa Report. If OLA wants to make revisions to the statement below, we can do that before responding to the FT.

-----Original Message-----

From: Seidel, Rebecca
Sent: Tuesday, May 23, 2006 11:24 AM
To: Smith, Kimberly A; Roehrkasse, Brian
Cc: Scolinos, Tasia; Taylor, Jeffrey (OAG); Voris, Natalie (USAEO)
Subject: Re: Urgent Report (Border Patrol Report-CNN Coverage)

Maybe because they didn't tell u about stmt till after fact?

-----Original Message-----

From: Smith, Kimberly A
To: Seidel, Rebecca; Roehrkasse, Brian
CC: Scolinos, Tasia; Taylor, Jeffrey (OAG); Voris, Natalie (USAEO)
Sent: Tue May 23 11:22:50 2006
Subject: RE: Urgent Report (Border Patrol Report-CNN Coverage)

They contacted OPA last night right after they had sent the statement. I've been working with them this morning to address it. As to why they sent an Urgent, I have no idea.

-----Original Message-----

From: Seidel, Rebecca
Sent: Tuesday, May 23, 2006 11:21 AM
To: Roehrkasse, Brian; Smith, Kimberly A
Cc: Scolinos, Tasia; Taylor, Jeffrey (OAG); Voris, Natalie (USAEO)
Subject: Re: Urgent Report (Border Patrol Report-CNN Coverage)

No one in OLA

-----Original Message-----

From: Roehrkasse, Brian
To: Seidel, Rebecca; Smith, Kimberly A
CC: Scolinos, Tasia; Taylor, Jeffrey (OAG)
Sent: Tue May 23 11:17:35 2006
Subject: FW: Urgent Report (Border Patrol Report-CNN Coverage)

Did you see this? Did SDCA run their statement by anyone here?

-----Original Message-----

From: USAEO-Urgent
Sent: Tuesday, May 23, 2006 11:07 AM
To: Tenpas, Ronald J (ODAG); Taylor, Jeffrey (OAG); Sierra, Bryan (OPA); Scolinos, Tasia; Sampson, Kyle; Roehrkasse, Brian; Mercer, Bill (ODAG); Goodling, Monica; Elwood, Courtney; Elston, Michael (ODAG); Smith, Kimberly A; Battle, Michael (USAEO); Beeman, Judy (USAEO); Coughlin, Robert; Fisher, Alice; Friedrich, Matthew; Kelly, John (USAEO); Parent, Steve (USAEO); Sabin, Barry; Schools, Scott (USAEO); USAEO-Chron; Voris, Natalie (USAEO)
Subject: Urgent Report (Border Patrol Report-CNN Coverage)

URGENT REPORT-06-05-0021

TO: THE ATTORNEY GENERAL
THE DEPUTY ATTORNEY GENERAL

FROM: Carol C. Lam
United States Attorney
Southern District of California
(619) 557-5690 (Office)
(Home)
(Cell)

DATE: May 23, 2006

CLASSIFICATION: Limited Official Use

CONTACT PERSON: Carol C. Lam
United States Attorney
Southern District of California
(619) 557-5690 (Office)
(Home)
(Cell)

SYNOPSIS: Yesterday, Congressman Darryl Issa criticized on CNN's "Lou Dobbs Tonight" SDCA's "refusal" to prosecute 100% of all alien smugglers. The USAO-SDCA has learned that the "Border Patrol Report" on which Rep. Issa relies is an unauthorized, altered version of an old report. The USAO-SDCA has issued a written statement to CNN with that information.

DISCUSSION: On Thursday, May 18, 2006, the Associated Press ran a news story prompted by the release of a 2004 "Border Patrol Report" by Congressman Darryl Issa (R-CA). According to Congressman Issa, the report from the El Cajon substation of the Border Patrol (San Diego Sector) concluded that morale was low among Border Patrol agents at the El Cajon station due to the high number of declined prosecutions by our office. The story received national media attention.

On Friday, May 19, 2006, the Chief of the U.S. Border Patrol, San Diego Sector, informed us that the report released by Congressman Issa was actually an altered and unauthorized version of an actual internal intelligence report issued by the El Cajon substation. The original report was labeled "Prosecution of Smugglers" for Fiscal Year 2003; the altered report was labeled "Prosecution of Smugglers (1324) Fiscal Year 2004." The altered 2004 report contained editorial comments and conclusions that were never seen by or authorized by Border Patrol management.

On Monday, May 22, 2006, this office was contacted by CNN and informed that Congressman Issa would be appearing on "Lou Dobbs Tonight" to discuss the "Border Patrol Report." CNN asked our office for a written statement to be shared during the interview. After checking with Border Patrol, San Diego Sector, we submitted the following written statement:

"Representative Issa has been misled. The document he calls a "Border Patrol Report" is actually an old internal Border Patrol document, relating to a single substation, that has been substantially altered and passed off as an official report. Many of the comments in the document to which Representative Issa refers are editorial comments inserted by an unidentified individual, and they were not approved by or ever seen by Border Patrol management.

Many important issues are raised by the problem of illegal immigration. However, we believe that all dialogue and debate should be based on well-informed and accurate data."

We have also advised Representative Issa's office that we believe the Border Patrol report to be an unauthorized and altered version of an old internal report.

In light of previous media interest in this issue, there is a possibility that the disclosure that the report is not genuine could generate substantial media interest. Our statement was read to Representative Issa by Lou Dobbs during his interview which aired at 3:30 PST.

<<UR-06-06-0021SDCAwpd.wpd>>

Elston, Michael (ODAG)

From: Tenpas, Ronald J (ODAG)
Sent: Wednesday, May 24, 2006 2:02 PM
To: Moschella, William; Otis, Lee L; Mercer, Bill (ODAG); Scolinos, Tasia; Fridman, Daniel (ODAG); Elston, Michael (ODAG)
Subject: FW: REP. ISSA CRITICIZES U.S. ATTORNEY LAM FOR WITHOLDING INFORMATION ON ALIEN SMUGGLING PROSECUTIONS AND POLICIES

Attachments: tmp.htm; image001.gif; image002.jpg; 5.24.06 LamLetter.pdf



tmp.htm (8 KB)



image001.gif (348 B)



image002.jpg (3 KB)



5.24.06 nLetter.pdf (117 KB)

want Carol to do.

Further to my e-mail last night on what we

Ron

-----Original Message-----

From: Lam, Carol (USACAS)
Sent: Wednesday, May 24, 2006 1:55 PM
To: Tenpas, Ronald J (ODAG)
Subject: Fw: REP. ISSA CRITICIZES U.S. ATTORNEY LAM FOR WITHOLDING INFORMATION ON ALIEN SMUGGLING PROSECUTIONS AND POLICIES

Ron,

For what it's worth, I have never met Congressman Issa.

Carol

-----Original Message-----

From: Hartman, Debra (USACAS) <DHartman@usa.doj.gov>
To: Lam, Carol (USACAS) <CLam@usa.doj.gov>
CC: Porter, Brenda (USACAS) <BPorter1@usa.doj.gov>
Sent: Wed May 24 10:25:26 2006
Subject: FW: REP. ISSA CRITICIZES U.S. ATTORNEY LAM FOR WITHOLDING INFORMATION ON ALIEN SMUGGLING PROSECUTIONS AND POLICIES

<<5.24.06 LamLetter.pdf>> <<image001.gif>> <<image002.jpg>>

If you can't pull this up we can fax it to you. SPC suggests that Brenda send it to David Smith and I would send it to Public Affairs and OLA so that they are aware of it. I will also send it over to David Iglesias' press person so that he can send it to his USA. Brenda is waiting from a call from Judy Beeman regarding the letter from DOJ to Issa.

NEWS FROM:

CONGRESSMAN DARRELL ISSA

Serving California's 49th District

211 Cannon House Office Building, Washington, DC 20515

(202) 225-3906, (202) 225-3303 (fax)

www.issa.house.gov <<http://www.issa.house.gov/>>

For Immediate Release

Contact: Frederick Hill

Wednesday, May 24, 2006
frederick.hill@mail.house.gov

Email:

REP. ISSA CRITICIZES U.S. ATTORNEY LAM FOR WITHHOLDING INFORMATION ON ALIEN SMUGGLING PROSECUTIONS AND POLICIES

Washington, DC - Rep. Darrell Issa (R-CA), today, sent the following letter to U.S. Attorney for the Southern District of California Carol Lam:

Ms. Carol C. Lam
United States Attorney
880 Front Street, Room 6293
San Diego, California 92101

Dear Ms. Lam:

In response to your comments on the Border Patrol internal memo my office obtained and released, your statement misses the mark and exhibits a willful disregard to the documented 251 incidents in fiscal year 2004 where the Border Patrol at the El Cajon station apprehended smugglers but led to smuggling charges for roughly 6% of the cases. The memo I released contains a specific enforcement number for each of the 251 incidents that you or the Department of Homeland Security can confirm by simply typing the number into a computer database.

Your failure to address the substantive issues raised in the memo is consistent with previous news reports and comments that I have repeatedly heard from Border Patrol agents who work closely with your office. You have previously disregarded my requests for information that can help me understand the extent of the problems associated with prosecuting alien smuggling cases and the resources you would need to adopt a zero tolerance policy for trafficking in human beings.

In the case of the memo I released, the fact that you have chosen to focus on unspecified alterations to what you freely admit is an "old Border Patrol document" and your assertion that this document was not seen or approved by Border Patrol management does not dismiss the verifiable facts and details in the memo. I can readily understand that the internal memo, written by a Border Patrol employee, is an embarrassment to your office as the memo speaks with such candor about barriers to prosecution that it could not

be embraced and released publicly as a report representing the views of Border Patrol management.

On Monday, my office requested your assistance in obtaining a copy of the report you referenced in your statement but your office has not returned that phone call. I find your statement that "all dialogue and debate should be based on well-informed and accurate data" incredibly disingenuous considering your record in response to my past requests for information on criminal aliens and alien smuggling.

The last correspondence I sent to you was October 13, 2005, concerning an alien by the name of Alfredo Gonzales Garcia, a.k.a. Isidro Gonzales Alas, FBI # 180566JAS. In this letter I asked that if there is some barrier to the prosecution of criminal aliens, including smugglers, that I am unaware of, to please communicate it so we can make sure you have the resources and policies in place needed to allow you to bring these criminal aliens and repeat offenders to justice.

Finally, as the representative of a Congressional district that is greatly impacted by border crimes and as a Member of Congress who sits on the Judiciary Committee, the Intelligence Committee, and the Government Reform Committee that collectively have oversight responsibilities for the Department of Justice and the Department of Homeland Security, your lack of cooperation is hindering the ability of Congress to provide proper oversight over your office and to make informed policy decisions. I am asked to craft and vote on legislative policies that determine your legal authority and the resources you receive and having full and correct information on an issue like the challenges of stopping alien smugglers is essential.

I request a joint meeting with you and the Chief Patrol Agent of the San Diego Border Sector to discuss the prosecution of alien smugglers and what resources are needed to establish a zero tolerance policy for prosecuting individuals who traffic in human beings. My office will contact your office to try and arrange a meeting time.

Sincerely yours,

Darrell Issa

Member of Congress

Representative Issa has been misled. The document he calls a "Border Patrol Report" is actually an old internal Border Patrol document, relating to a single

substation, that has been substantially altered and passed off as an official report. Many of the comments in the document to which Representative Issa refers are editorial comments inserted by an unidentified individual, and they were not approved by or ever seen by Border Patrol management.

Many important issues are raised by the problem of illegal immigration. However, we believe that all dialogue and debate should be based on well-informed and accurate data.

-- 5/22/06 U.S. Attorney Carol Lam

###

Frederick R. Hill

Press Secretary

Rep. Darrell Issa (California 49th)

211 Cannon House Office Building

Washington, D.C. 20515

Phone: 202-225-3906

Fax: 202-225-3303

DARRELL E. ISSA
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Congress of the United States
House of Representatives
Washington, DC 20515-0549

COMMITTEE ON GOVERNMENT REFORM
SUBCOMMITTEES:
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FEDERAL WORKFORCE & AGENCY ORGANIZATION

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INTERNATIONAL RELATIONS
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INT'L TERRORISM & NONPROLIFERATION—VICE-CHAIRMAN
EUROPE & EMERGING THREATS
MIDDLE EAST & CENTRAL ASIA

COMMITTEE ON THE JUDICIARY
SUBCOMMITTEES:
COURTS, THE INTERNET & INTELLECTUAL PROPERTY
IMMIGRATION, BORDER SECURITY & CLAIMS
HOUSE POLICY COMMITTEE

May 24, 2006

Ms. Carol C. Lam
United States Attorney
880 Front Street, Room 6293
San Diego, California 92101

Dear Ms. Lam:

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Finally, as the representative of a Congressional district that is greatly impacted by border crimes and as a Member of Congress who sits on the Judiciary Committee, the Intelligence Committee, and the Government Reform Committee that collectively have oversight responsibilities for the Department of Justice and the Department of Homeland Security, your lack of cooperation is hindering the ability of Congress to provide proper oversight over your office and to make informed policy decisions. I am asked to craft and vote on legislative policies that determine your legal authority and the resources you receive and having full and correct information on an issue like the challenges of stopping alien smugglers is essential.

I request a joint meeting with you and the Chief Patrol Agent of the San Diego Border Sector to discuss the prosecution of alien smugglers and what resources are needed to establish a zero tolerance policy for prosecuting individuals who traffic in human beings. My office will contact your office to try and arrange a meeting time.

Sincerely yours,



Darrell Issa
Member of Congress

U.S. Department of Justice
Eastern District of Arkansas

FOR IMMEDIATE RELEASE
May 18, 2006

CONTACT: Bud Cummins
United States Attorney
501-340-2650

RECENT
CRIMINAL IMMIGRATION MATTERS IN THE
EASTERN DISTRICT OF ARKANSAS

In response to recent media inquiries about immigration related prosecutions, United States Attorney Bud Cummins announced the following examples of prosecution activity in the district involving four individuals: Francisco Javier Hurtado-Amezquta, Antonio Ortiz-Lopez, Saul Gregorio Salazar-Galicia, and Roberto Nava-Flores.

The grand jury recently handed up indictments for Francisco Javier Hurtado-Amezquta and Antonio Ortiz-Lopez.

Hurtado-Amezquta, a native and citizen of Mexico, was charged with illegally re-entering the United States after having already been deported. Hurtado has already been convicted in this district for illegal re-entry in 1999 and again in 2003. Hurtado is also charged in separate case alleging he distributed methamphetamine.

Ortiz-Lopez, also a Mexican National, was indicted for making a materially false statement while attempting to purchase a firearm and misusing a social security number. Aliens unlawfully in the United States are prohibited from purchasing firearms.

Immigration and Customs Enforcement (ICE), Alcohol Tobacco and Firearms (ATF) and Social Security Administration Office of Inspector General (SSA OIG) agents from Little Rock worked together to apprehend these individuals.

In recent days, prosecutors and immigration agents have also obtained two Complaints of criminal aliens in the district. On May 15, 2006, Saul Gregorio Salazar-Galicia, a Mexican National, was charged with illegally re-entering the Country after already having been deported. Salazar was already in the custody of the Arkansas Department of Correction for having been convicted in state court for Felony Driving Under the Influence 4th. Salazar was deported in 2001.

Yesterday, a United States Magistrate Judge issued a Complaint for Roberto Nava-Flores,

DAG000000447

also a Mexican National illegally in the United States. Nava was charged with possessing a fraudulent I-551 which is more commonly referred to as a "Green Card." Nava came to the attention of federal authorities when he was arrested for domestic violence in Pope County. ICE agents from Texarkana apprehended Mr. Salazar and agents from ICE in Fort Smith apprehended Mr. Nava.

The United States Attorney's Office has worked with the Little Rock and Texarkana ICE offices toward the creation of a criminal immigration task force. Meeting regularly, both federal and local law enforcement officers have initiated an organized strategy to attack the problems associated with criminal aliens and to start identifying criminal aliens that are most problematic and prevent their criminal enterprises in the jurisdiction. The task force is coordinated by Assistant United States Attorney Joe Volpe, who also coordinates the district's Anti-Terrorism Advisory Council and is a member of the Joint Terrorism Task Force.

One very real threat is the threat of terrorists using smugglers and fake documents to infiltrate the United States. However, other serious threats include fake document production, identity theft, alien smuggling, and foreign gang activity. Other serious criminal activity relates to crimes against aliens including civil rights violations involving alien slavery, and hostage taking. The Task Force will work together on these increasingly difficult issues with the aim of effectively reducing this criminal activity in Arkansas.

"Obviously, immigration problems in this country are a major focus of national attention," stated Cummins. "The solutions go farther than just law enforcement. They probably involve legislative, diplomatic, economic and cultural factors as well. But from a federal law enforcement perspective, we are continuing to aggressively pursue immigration violations in a variety of categories in this district."

Congress of the United States

Washington, DC 20515

October 20, 2005

The Honorable Alberto Gonzales
Attorney General
United States Department of Justice
950 Pennsylvania Ave., NW
Washington, DC 20530

Dear Attorney General Gonzales:

We write to request a meeting with you to discuss our frustration with the current policies within the Administration related to the prosecution of criminal aliens. To date, many illegal aliens, who deserve jail time, fall instead into the current practice of "catch and release." The recidivism rate among criminal aliens is high, and your Department's lack of action aggravates rather than remedies this problem.

The Border Patrol recently arrested illegal alien, Alfredo Gonzales Garcia, near the border in San Diego. Even though Mr. Garcia had at least two prior arrests for selling drugs and was incarcerated on two separate occasions for these offenses, the U.S. Attorney's Office in San Diego declined to prosecute him. Prior to that event, the U.S. Attorney's Office chose not to prosecute Antonio Amparo-Lopez, a human smuggler and illegal alien with multiple prior convictions. In each instance, under the Immigration and Nationality Act, they were both eligible, upon conviction, for a two-year prison sentence, at minimum.

The U.S. Attorney in San Diego has stated that the office will not prosecute a criminal alien unless they have previously been convicted of two felonies in the district. This lax prosecutorial standard virtually guarantees that both of these individuals will be arrested on U.S. soil in the future for committing further serious crimes.

There is one simple reason why "catch and release" cannot continue: it endangers our citizens. It is the responsibility of the Department of Justice to punish dangerous criminals who violate federal laws, and this includes criminal aliens. When we meet, at the very least we encourage you to be prepared to discuss the current policies used by the U.S. Attorneys to determine when to prosecute criminal aliens, including providing us with a copy of the prosecution guidelines that are applied to such cases in the Southern District of California.

Again, we would like to meet to discuss the disparity between crimes committed and prosecutions conducted at your earliest convenience. Please contact us at 202-225-3906 to schedule this meeting.

Sincerely,



Ken Colwell
John Little
By A.O.
Etc. Packer
Dana Roberts
L. M. Nunez
Tom Jung
Richard Pombo
Bill Thomas

Ray Kishner
Buck McLean
Wayne
Wally Berger
Jimmy
Randy "Lake" Cunningham



Washington, DC 20530

June 20, 2006

MEMORANDUM

TO: William Mercer
~~Principal Associate Deputy Attorney General~~
Office of the Deputy Attorney General

FROM: Mythili Raman *MOR/MS*
Senior Counsel to the Deputy Attorney General
Office of the Deputy Attorney General

SUBJECT: District of Arizona request to implement recording of confessions.

On March 8, 2006, Paul Charlton, United States Attorney for the District of Arizona, requested the Department's permission to institute a pilot program that would require federal investigative agencies in the District of Arizona to record confessions except in instances where a recording cannot be "reasonably obtained." As noted below, the investigative agencies that have been asked for their input on this proposal – FBI, DEA, ATF and USMS – are unanimously opposed to the implementation of a recording policy, while the Criminal Chiefs Working Group strongly favors the pilot program. For the reasons stated below, I recommend that the Department disapprove the request for the pilot program.

I. The USAO's Proposal to Implement a Pilot Program

A. The "Recording Policy"

The recording policy proposed by the U.S. Attorney's Office for the District of Arizona provides as follows:

Cases submitted to the United States Attorney's Office for the District of Arizona for prosecution in which an investigative target's statement has been taken, *shall* include a recording, by either audio or audio and video, of that statement. The recording may take place either surreptitiously or overtly at the discretion of the interviewing agency. The recording *shall* cover the entirety of the interview to include the advice of Miranda warnings, and any subsequent questioning.... *Where a taped statement cannot reasonably be obtained the Recording Policy shall not apply.* The reasonableness of any unrecorded statement shall be determined by

the AUSA reviewing the case with the written concurrence of his or her supervisor.

(emphasis added). An “investigative target” is defined by the USAO as “any individual interviewed by a law enforcement officer who has reasonable suspicion to believe that the subject of the interview has committed a crime.”

Despite the mandatory language of the policy, Paul Charlton, in a letter to the investigative agencies in Arizona, emphasized that the policy “does not adopt a rule that all custodial statements at all times in all circumstances must be recorded, and does adopt an express exception precisely to cover situations where obtaining a taped statement would not be practical.” Furthermore, he emphasized that “there is no hard and fast rule under the Recording Policy that all statements in every circumstance must be overtly recorded.” He did not, however, identify any specific examples of what he viewed to be acceptable exceptions to the policy.

B. The USAO’s Stated Reasons for Implementing the Pilot Program

In requesting that the Department permit the pilot program to go forward in the District of Arizona, USA Charlton has thoughtfully articulated a number of factors favoring such a policy. Among other things, he argues that (1) a recorded statement is the best evidence of what was said; (2) recordings would facilitate the admission of any statements and would save the government time-consuming pretrial litigation; (3) recorded statements have a powerful impact on juries and are particularly important given that jurors are well aware that electronic devices can be small, effective and cheap; (4) recording confessions would enhance the government’s ability to obtain convictions and would ensure that agents not be subject to unfair attack; (5) recording confessions would relieve agents of the need to take notes, thereby allowing them to conduct more effective interviews; (6) recording statements would allow agents to review the taped statements to look for additional clues and leads, and (7) recording would raise the public’s confidence in law enforcement. He additionally notes that the U.S. Attorney has sole jurisdiction for prosecuting major crimes in Indian country, and because local police agencies in Arizona routinely tape confessions, the failure of the FBI to record confessions – which, in his view, resulted in acquittals or less than desirable pleas in at least three different cases prosecuted by his office – has created an unfair disparity between the way that crime is treated in the Native American community and all other communities in Arizona.

II. Opposition to Proposed Recording Policy by Investigative Agencies

With the exception of the Criminal Chiefs Working Group, which expressed a strong sentiment that there should be wider, if not regular, use of recording equipment to document confessions and certain witness interviews, all other agencies whose input was sought uniformly oppose the proposed recording policy. (The Criminal Chiefs Working Group did not articulate any reasons for its position beyond those stated by Paul Charlton and did not suggest any substantive changes to the Arizona policy.) Although some of the investigative agencies’

criticisms are focused on Arizona's particular proposal, most of the criticisms concern the implementation of *any* one-size-fits-all recording policy.

A. FBI

Under the FBI's current policy, agents may not electronically record confessions or interviews, openly or surreptitiously, unless authorized by the Special Agent in Charge ("SAC"). In reaffirming that policy in a memorandum issued to all field offices on March 23, 2006, the FBI argued that (1) the presence of recording equipment might interfere with and undermine a successful "rapport-building interviewing technique"; (2) FBI agents have faced only occasional, and rarely successful, challenges to their testimony; (3) "perfectly lawful and acceptable interviewing techniques do not always come across in recorded fashion to lay persons as a proper ~~means of obtaining information from defendants~~"; (4) ~~the need for logistical and transcription support would be overwhelming if all FBI offices were required to record most confessions and statements; and (5) a mandatory recording policy would create obstacles to the admissibility of lawfully obtained statements which, through inadvertence or circumstances beyond the control of the interviewing agents, could not be recorded.~~ Despite the presumption in the FBI policy that most confessions are not to be recorded, the policy also expressly anticipates that recording can be useful in some situations, and accordingly gives each SAC the authority to permit recording if she or he deems it advisable.

The FBI opposes Arizona's proposed recording policy, primarily because the existing FBI policy, in its view, already gives SACs flexibility to authorize the recording of statements, as evidenced by the FBI Phoenix Division's internal policy of recording interviews of child sex victims and by its decision in many cases (including in Indian country cases), to record statements of targets or defendants. The FBI, in opposing the recording policy, also takes issue with Paul Charlton's description of three failed prosecutions that the USAO attributes to the FBI's failure to record a confession; in each of those three instances, the FBI points out several other factors that, in its view, contributed to the unfavorable results. More significantly, the FBI contends that the vast majority of Indian country cases, even those in which confessions were not recorded, have resulted in convictions.

B. DEA

The DEA's current policy permits, but does not require, the recording of defendant interviews. In voicing its strong opposition to the proposed pilot program, the DEA describes that the proposal is neither necessary nor practical. Among other things, the DEA notes that there is no history or pattern of the DEA's recording policy resulting in acquittals or the suppression of defendants' statements. Additionally, the DEA notes that given the number of multi-district investigations that it and other agencies conduct, the adoption of a mandatory recording policy by one district would make it extremely difficult for agents operating in other divisions to conduct multi-district investigations that involve that district. Moreover, the DEA, like the FBI, avers that a violation of the USAO recording policy could very well lead to suppression or acquittals in

cases in which a confession was not recorded, even where the confession was otherwise obtained lawfully. The DEA additionally notes that, at the very least, the failure of an agent to follow the recording policy would be admissible in civil litigation and could adversely affect agencies' ability to invoke the discretionary function exception in cases brought under the Federal Tort Claims Act.

Additionally, the DEA has expressed specific concerns about the particular policy proposed by the USAO in Arizona. First, the DEA notes that the recording policy, which anticipates the recording of statements of all "investigative targets," is overbroad, as the recording requirement would be triggered during even routine interdiction or other *Terry* stops. Additionally, the DEA notes that because the USAO's policy provides no guidance as to what constitutes a "reasonable" reason for not recording a statement, AUSAs and their supervisors might engage in after-the-fact second-guessing of decisions made by the agents, which may result in disputes between the agencies and USAO and "AUSA shopping." Additionally, the DEA avers that the proposed Arizona policy would allow the USAO to decline to prosecute an otherwise meritorious case simply because a recording was not made, rather than considering all the facts and circumstances in the case (including *all* admissible evidence), in deciding whether to accept a case for prosecution.

C. ATF

The ATF's current policy does not require electronic recording, but instead leaves the decision about whether to record to the discretion of the individual case agent. In making that decision, the case agent may confer with supervisors and the relevant USAO.

In voicing its opposition to Arizona's proposed pilot program, the ATF states that the Department should not promulgate a one-size-fits all approach to interrogation. Among other things, the ATF has expressed concern that (1) a suspect may "play" to the camera or be less candid; (2) utilizing "covert" recordings would not eliminate the problem of a suspect "playing" to the camera or withholding information, because the fact that an agency is covertly recording confessions would become public after the first trial at which such a recording is played; (3) juries may find otherwise proper interrogation techniques unsettling; (4) suspects may confess while being transported to a place where an interrogation is to take place; (5) mandatory recording raises a host of logistical questions, including questions about retention/storage of recordings and what to do in the event of an equipment malfunction; (6) the costs of supporting such a pilot program, including purchasing recording equipment and securing transcription services, would be enormous; (7) the mandatory language of the Arizona proposal leaves no discretion to agents on the field; and (8) the recording policy would hamper task force investigations where federal charges are brought in jurisdictions in which local law enforcement officers do not electronically record confessions. In sum, ATF argues that any benefits that may result from recording confessions would come at the expense of limiting the flexibility of agents to make the decision about whether to record a confession in any particular situation.

D. USMS

The USMS does not currently require taping of confessions and, indeed, the USMS notes that it does not normally solicit confessions to accomplish its mission of tracking and capturing fugitives. The USMS's opposition to a recording policy is based primarily on the impracticality of taping in carrying out its mission. Among other things, the USMS notes that because it conducts most of its interviews in the field, rather than in a controlled environment, recording is generally impractical. Additionally, the USMS notes that even when a defendant does confess to a crime while in USMS custody, that confession is usually spontaneous and not in response to any question posed by a USMS officer, and is usually made in vehicles or other remote locations where recording is not available.

III. Recommendation

I have set forth below factors that weigh in favor of and against instituting the specific pilot program proposed by the USAO in Arizona. On balance, I recommend against implementing the pilot program, as I believe that the potential costs, as outlined below, outweigh the potential benefits. For purposes of this analysis, I have not assumed that recording confessions necessarily is a presumptively wise or presumptively unwise law enforcement technique, given that experienced investigators and prosecutors have widely divergent views on that issue.

The following factors weigh in favor of permitting the USAO to institute a pilot program that would require the recording of confessions:

- 1) As noted in more detail by Paul Charlton, it is possible that at least some classes of prosecutions will be benefitted as a result of a mandatory recording policy, for example, child molestation cases in which the victim is often not cooperative or too afraid to testify. Accordingly, a pilot program, like the one proposed by the USAO, would allow the district to make immediate changes that could instantly strengthen at least some of its prosecutions. Additionally, and related, for the numerous reasons set forth in the USAO's submission to the Department, law enforcement as a whole could very well benefit from a policy that mandates recording of confessions.
- 2) The FBI's current policy creates a presumption that recording confessions is an unwise law enforcement technique. The FBI's decision to vest the discretion in the SAC to create "exceptions" to its policy, moreover, makes it difficult for any agent (or even the agent's immediate supervisor) to exercise his or her discretion to record a confession in any particular case or circumstance in which a recording may be warranted. Accordingly, although the FBI argues that it allows its agents the flexibility to record confessions, the practical effect of allowing only the SAC to grant an exception to its policy is the creation of a heavy presumption against taping.

- 3) Unless a pilot program is initiated, the District of Arizona will not be able to develop any real experience with the possible benefits of recording confessions, particularly given the presumption in the FBI's current policy that confessions should not be recorded.

The following factors weigh against permitting the USAO in the District of Arizona to institute its proposed pilot program. In my view, these factors far outweigh those favoring the pilot policy:

- 1) The problems identified by Paul Charlton in formulating his recording policy – such as the inadequacy of agents' reports documenting confessions – do not appear to be widespread, and isolated acquittals in the District of Arizona should ~~not lead the Department to institute a pilot program that could hamper multi-~~district investigations and task force investigations. Absent evidence that many or most cases involving unrecorded confessions result in acquittals, there is simply an insufficient basis to impose any particular practice on investigative agents in any particular district.¹
- 2) As noted by many of the investigative agencies, mandating the recording of confessions could have a harmful effect on law enforcement, such as causing some defendants who may have been inclined to confess if they were not recorded, to decide not to confess once confronted with a recording device.
- 3) No federal agency currently prohibits agents from recording a statement, despite variances in their approaches to how and by whom the decision to record a confession can be made. Accordingly, the need for the USAO's proposed policy is unclear.
- 4) As noted by some of the agencies, the implementation of a pilot program would likely disrupt multi-district investigations that involve the district that is selected to implement the program. Additionally, if the local law enforcement authorities in that district do not mandate recording of confessions, task force investigations, too, could be disrupted.
- 5) A new USAO policy that mandates recording of confessions could *de facto* become a new basis on which judges suppress statements – a high cost given the uncertainty of the potential benefits.
- 6) The USAO has not indicated what measures of success it will use in evaluating the pilot program. In my view, measuring the success of such a program by, for

¹ The USAO's proposed policy does not appear to be limited to the Department and would presumably apply to investigative agencies such as ICE and USPIS.

example, evaluating the number of acquittals, convictions, guilty pleas or lengths of sentences, would not be helpful because, as seen by the competing views of the FBI and USAO in the District of Arizona, reasonable people can disagree as to the factors that lead to any particular result in a case. Similarly, it would be difficult, if not impossible, to definitively track some of the potential costs of imposing the recording policy, such as whether a particular defendant declined to give a confession *because* the agents used recording equipment. Additionally, the problem of usefully extrapolating the experience of one district to another district is amplified by the fact that, as noted by the FBI, there are numerous variables involved in how and where to institute such a pilot program, including whether the district selected for the program should be one in which the local and state agencies record interrogations; whether the district selected for the program should be large or small; whether two offices should be selected so that one can operate as a "control"; whether the selected district should be one in which there are many prosecutions under the Assimilated Crimes Act; whether all target interviews should be recorded or only those involving certain serious felonies; and whether the recordings should be surreptitious or overt.

IV. Summary

For the reasons discussed in my description of the factors weighing against the pilot program, I recommend that the Department not approve the USAO's request to initiate a pilot program, as I believe that the potential costs far outweigh the potential benefits. If the Department, after further evaluating the USAO's proposal, is inclined to authorize the pilot program, I would recommend that the Department, at the very least, require the USAO in Arizona to provide the Department with a proposal of the measures by which the success of the pilot program will be assessed.

cc: Michael Elston
Ronald Tenpas

Elston, Michael (ODAG)

From: Goodling, Monica
Sent: Wednesday, July 05, 2006 10:17 AM
To: Elston, Michael (ODAG)
Subject: RE: Lam

Yes - need to discuss at the appts update anyway.

-----Original Message-----

From: Elston, Michael (ODAG)
Sent: Wednesday, July 05, 2006 10:16 AM
To: Goodling, Monica
Subject: Lam

Could we hold off on the Battle call until next week?



Washington, DC 20530

July 7, 2006

MEMORANDUM

TO: William Mercer
Principal Associate Deputy Attorney General
Office of the Deputy Attorney General

Michael Elston
Chief of Staff
Office of the Deputy Attorney General

FROM: Mythili Raman ^{MR}
Senior Counsel to the Deputy Attorney General

SUBJECT: Recommendations for Implementation of Pilot Program Instituting Mandatory Recording Policy in the District of Arizona

You have asked me to consider what, if any, changes should be made to the mandatory recording policy proposed by United States Attorney Paul Charlton in the District of Arizona, if the Department approved the implementation of a pilot program in Arizona to test that policy. I have set forth below some recommendations concerning the scope of the exception to the recording policy, and the manner in which the success of the policy should be measured at the end of a one-year pilot program.

I. **Proposed Modifications to the Exception to the Recording Policy**

A. **The Current Policy**

The recording policy currently proposed by the United States Attorney's Office for the District of Arizona provides as follows:

Rule: Cases submitted to the United States Attorney's Office for the District of Arizona for prosecution in which an investigative target's statement has been taken, shall include a recording, by either audio or audio and video, of that statement. The recording may take place either surreptitiously or overtly at the discretion of the interviewing agency. The recording shall cover the entirety of the interview to include the advice of Miranda warnings, and any subsequent questioning.

Exception: *Where a taped statement cannot reasonably be obtained the Recording Policy shall not apply.* The reasonableness of any unrecorded statement shall be determined by the AUSA reviewing the case with the written concurrence of his or her supervisor.

(emphasis added).

B. Proposed Expansion of the Exception to the Recording Policy

I recommend that if the Department were to approve a pilot program implementing the USAO's policy, the stated exception to the policy be modified and expanded to address concerns about (1) the rigidity and limited scope of the current exception to the policy, and (2) the implicit assumption in the current recording policy that an AUSA and USAO supervisor could decline prosecution of an otherwise strong case solely based on an agent's failure to record a statement. Specifically, I recommend that the exception to the policy be amended as follows:

Exception: Where taping a statement would not be reasonable in light of the specific circumstances presented, the Recording Policy shall not apply. Each agent or agency, before making a decision not to record a statement in a particular circumstance, must make every effort to consult with an Assistant United States Attorney. The failure to record a statement pursuant to this Recording Policy will be a factor considered by the United States Attorney's Office in evaluating whether there is sufficient evidence to accept a case for prosecution.

As seen above, the first proposed amendment to the recording policy's exception expands the circumstances under which an agent may invoke the exception to the recording policy. In the current version of the recording policy, the exception to the policy is triggered only in instances "where a taped statement cannot be reasonably obtained." That language suggests that the exception to the mandatory recording policy applies only in cases where the physical act of recording cannot be practicably accomplished – for example, when an agent stops a suspect on the roadside and must immediately begin to question him for safety reasons, even though recording equipment is not readily available to tape the roadside interrogation.

That current version of the exception is not expansive enough to accommodate legitimate law enforcement concerns that go beyond just the availability of recording equipment or the practicability of recording a statement that may be taken at a roadside. For example, the current version of the exception does not appear to take into account the familiar situation in which a target agrees to cooperate with law enforcement and provide information about others involved in criminal activity, but – because of concerns about retaliation, concerns about personal safety or other factors – will do so only if the statement is not recorded and if agents can guarantee that his identity will remain confidential. In those circumstances, it would be reasonable – indeed crucial – for law enforcement agents to decline to record a statement in order to get as much information from the target as possible. This flexibility is particularly important in terrorism cases, where

gathering as much information as possible from a cooperative target is vital for national security. Similarly, the current version of the recording policy's exception does not appear to take into account situations in which, for example, a target in a drug case is interdicted with drug proceeds and immediately agrees to cooperate and conduct a controlled delivery of the money to his supplier. In such a situation, the agents should have the flexibility to determine that the entire pre-delivery debriefing and each statement made by the target while conducting the delivery itself (which could span several days) need not be recorded. My suggested amendment provides flexibility to the agents – in consultation with an AUSA – to decide not to record a statement in such circumstances.

My second proposed modification to the recording policy's exception is the deletion of the sentence which currently reads: "The reasonableness of any unrecorded statement shall be determined by the AUSA reviewing the case with the written concurrence of his or her supervisor." That language, when read in conjunction with the rest of the recording policy, has left the impression with some of the law enforcement agencies that the USAO can and will presumptively decline to prosecute a case in which a statement was not recorded. In cases where the evidence of a target's guilt is overwhelming, but an agent neglected to record the target's statement, declining prosecution clearly would not be in the best interests of the government. Accordingly, I propose deleting that sentence and replacing it with the following sentence: "The failure to record a statement pursuant to this Recording Policy will be a factor considered by the United States Attorney's Office in evaluating whether there is sufficient evidence to accept a case for prosecution." That amendment would give the USAO flexibility to decline a case in which the USAO believes that the failure to record will adversely affect the outcome of the prosecution, while still allowing agencies to present to the USAO cases that perhaps should be accepted for prosecution even absent a recorded statement.

II. Measuring the Success of the Pilot Program

The purpose of instituting a pilot program like the one proposed by the USAO would be to evaluate, at the end of a year, whether the program was successful in the District of Arizona and then to evaluate whether the program should be implemented in other districts. In response to the Department's request for a proposal on how the USAO would evaluate the pilot program, Paul Charlton has indicated that the USAO would take the following steps: (1) the USAO would track pleas and conviction rates in cases in which statements were or were not taped, and would ~~compare those rates to the plea and conviction rates obtained in cases investigated by the~~ "control" squads that would continue to use current agency recording policies; (2) the USAO would convene a coordinating group consisting of representatives from the USAO and the agencies, which would meet periodically to establish uniform procedures and iron out any problems; (3) AUSAs would poll juries after verdicts in which confessions were introduced to determine what effect the decision to tape a confession had on the juries' decisions; and (4) at the end of the one-year trial period, the USAO would distribute a questionnaire to AUSAs and agents soliciting their comments and anecdotal impressions regarding the recording policy and compile all of those findings into a report that could be presented to the Department.

These proposals provide a good start for evaluating the success of a pilot program. I recommend, however, that the following additional factors be considered and tracked in evaluating the success of any pilot program that may be implemented:

- 1) In addition to tracking conviction rates, the USAO should track whether the defendants are convicted of or plead to the most serious count charged in the indictment. This factor is an important one to follow, precisely because one of the complaints underlying the USAO's request to implement the pilot program was that, in at least one case, the USAO was forced to "plead down" a case to a less serious charge because the defendant's statement was not recorded. Accordingly, to address that concern, it will be essential to measure not only the number of convictions, but also whether the USAO was forced to "plead down" the case to something less than the most serious count charged in the indictment.
- 2) One of the possible benefits of the recording policy is that defendants, when confronted with their recorded confessions, may elect to plead guilty rather than proceed to trial. Accordingly, the USAO should make every effort to track whether the trial/guilty plea ratio is affected by the implementation of the recording policy.
- 3) In formulating the questionnaires that are circulated to AUSAs and agents, the Department must focus on obtaining information not just about factors that can be easily quantified – such as number of convictions – but also about other factors that cannot be easily quantified. For example, any anecdotal evidence from jurors that the taping of statements gives the community greater confidence in federal law enforcement would be important to compile and consider.
- 4) Similarly, in formulating the questionnaires, the Department must focus on determining whether there are law enforcement "costs" that result from the implementation of the program that cannot be easily quantified. Those potential law enforcement "costs," which necessarily would not be reflected in the number of convictions or pleas, include (a) whether a significant number of targets decline to give a statement when faced with a recording device that they may have otherwise given; (b) whether a significant number of targets "negotiate" with agents about what they will or will not say when the agents insist on recording the statements; (c) whether a significant number of defendants decline to cooperate and provide information about others immediately after an arrest because of the recording requirement; (d) whether the failure to comply with the recording policy results in, or is a factor in, any decisions by judges to suppress statements that were otherwise properly obtained; and (e) whether jurors acquit defendants of any or all counts because of a failure to comply with the recording policy where the jurors may not otherwise have considered that factor in the absence of a mandatory recording policy. This set of variables – i.e., the costs to law

enforcement that are not reflected in rates of convictions – will necessarily be the most difficult to track, but, in my view, must be tracked in evaluating any successes and failures of the pilot program.

- 5) Assuming that the Department adopts the USAO's view that each agency should have a "control" squad that continues to operate under each agency's current recording policy, it will be important at the conclusion of the pilot program to make comparisons *between* agencies, because the "control" groups from each agency necessarily will be using a different standard for recording during the one-year trial period. For example, the FBI "control" squads will utilize a policy of not recording statements absent approval from the SAC, while the ATF "control" groups will operate under a policy that allows each agent to use his or her own discretion in making the decision about whether to record. Because one of the goals of the pilot program should be to determine whether the USAO's proposed recording policy is more effective than any existing policy of any particular agency, it will be crucial that the evaluation of the program include a discussion about whether the recording policy affected cases investigated by each participating agency in a different way.¹
- 6) Finally, as discussed yesterday, the questionnaires that are completed by the agents and AUSAs should be anonymous, so that agents and AUSAs feel free to express opinions that may differ from the opinions of their supervisors or agencies. For the same reason, it would be wise for a Department component to compile the questionnaires and the statistics, and then prepare a report on the implementation of the program. Given the wide divergence of views about this pilot program – with the USAO strongly in favor and the agencies strongly against – it would be unwise for either the USAO or the agencies to take the lead on drafting the final report on the benefits and costs of the program. The report generated by the Department should, of course, be circulated to the USAO and agencies for comments.

III. Summary

The evaluation of a pilot program like the one proposed by the USAO in the District of Arizona is necessarily a difficult undertaking, precisely because the benefits and costs cannot be easily quantified. This difficulty is compounded by the fact that, as noted in my first memorandum describing the proposed pilot project, there are widely divergent views on the potential benefits and costs of the USAO's proposed recording policy. Accordingly, if the

¹ The USMS should be excepted from complying with the recording policy because, as mentioned in the USMS's submission, the USMS's mission is primarily to find fugitives rather than affirmatively investigate criminal matters, and most of the USMS's encounters with fugitives are under circumstances that do not easily lend themselves to recording.

Elston, Michael (ODAG)

From: Mercer, Bill (ODAG)
Sent: Saturday, July 08, 2006 1:35 PM
To: Elston, Michael (ODAG)
Subject: Re: Carol Lam / / Please call.

What that Carol Lam can't meet a deadline or that you'll need to interact with her in the coming weeks or that she won't just say, "O.K. You got me. You're right, I've ignored national priorities and obvious local needs. Shoot, my production is more hideous than I realized."

Or that I'm not going to send you as many of these humorous missives?

We are a good team. As I go through all of the stuff that remains on the to do list, it is pretty impressive how much we crossed off that list. I will miss that, but if all goes well we are only looking at about a 60 day hiatus.

Sent from my BlackBerry Wireless Handheld

-----Original Message-----
From: Elston, Michael (ODAG)
To: Mercer, Bill (ODAG)
Sent: Sat Jul 08 13:11:47 2006
Subject: Re: Carol Lam / / Please call.

This is so sad -- I am not adjusting well to this change.

-----Original Message-----
From: Mercer, Bill (ODAG)
To: Lam, Carol (USACAS)
CC: Elston, Michael (ODAG)
Sent: Sat Jul 08 11:54:13 2006
Subject: FW: Carol Lam / / Please call.

My time as PADAG has come to a close. I gather that you will be e-mailing something on Monday. Will you direct it to the Deputy's COS Mike Elston?

From: Henderson, Charles V
Sent: Friday, July 07, 2006 5:45 PM
To: Mercer, Bill (ODAG)
Subject: Carol Lam / / Please call.

She asked whether you are waiting for a response.

Elston, Michael (ODAG)

From: Elston, Michael (ODAG)
Sent: Saturday, July 08, 2006 3:11 PM
To: Mercer, Bill (ODAG)
Subject: Re: Carol Lam / / Please call.

Indeed -- but you will forget all of the little people once you are No. 3 in the Department!

Carol Lam is sad, too, but that was not what I was thinking!

-----Original Message-----

From: Mercer, Bill (ODAG)
To: Elston, Michael (ODAG)
Sent: Sat Jul 08 13:35:19 2006
Subject: Re: Carol Lam / . Please call.

What that Carol Lam can't meet a deadline or that you'll need to interact with her in the coming weeks or that she won't just say, "O.K. You got me. You're right, I've ignored national priorities and obvious local needs. Shoot, my production is more hideous than I realized."

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Elston, Michael (ODAG)

From: Smith, David L. (USAEO)
Sent: Thursday, July 13, 2006 8:14 PM
To: Elston, Michael (ODAG); Scott-Finan, Nancy; Voris, Natalie (USAEO)
Subject: RE: Feinstein letter — 1021001

Attachments: Sen.Feinstein.6.15.06.(3).wpd; Issa.5.24.06.ltr.wpd



Sen.Feinstein.6.15. Issa.5.24.06.ltr.wp
06.(3).wpd ... d (60 KB)

All,

Attached is the revised response to the Feinstein letter that includes Carol Lam's edits. I have placed it on OLA letterhead. Note that the added data comparing 2004 and 2005 sentencing at the 1-12, 36-60 and +60 month increments comes directly from EOUSA's LIONS data. I am seeking to follow up on the other added data, specifically the 543 sentenced defendants and the 880 defendants convicted of re-entry, which I think must include fast track defendants who plead under 1325. These latter two figures I believe come from SDCA data, not LIONS data, which is why the letter states "data from the Southern District."

I also put the Lam-revised Issa letter, which I forwarded in draft form earlier today, on OLA letterhead.

Dave

-----Original Message-----

From: Voris, Natalie (USAEO)
Sent: Wednesday, July 12, 2006 1:20 PM
To: Smith, David L. (USAEO); Scott-Finan, Nancy; Elston, Michael (ODAG)
Subject: FW: Feinstein letter ---- 1021001

Thanks, Dave.

Mike and Nancy - here is a similar letter that will need ODAG and OLA's approval. If you would prefer, I can go ahead and get both the Issa and Feinstein letters moving your direction through the Exec Sec process. Given the topic, I wanted to make sure that EOUSA was approaching our response in the correct manner before moving the letters out our door.

Thank you,
nv

-----Original Message-----

From: Smith, David L. (USAEO)
Sent: Wednesday, July 12, 2006 12:07 PM
To: Voris, Natalie (USAEO)
Subject: RE: Feinstein letter ---- 1021001

Natalie,

Attached is an edit of the Feinstein letter.



U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

The Honorable Dianne Feinstein
United States Senator
Washington, D.C. 20510

Dear Senator Feinstein:

This is in response to your letter dated June 15, 2006, to the Attorney General regarding the issue of immigration-related prosecutions in the Southern District of California. We apologize for any inconvenience our delay in responding may have caused you.

Attached please find the information you requested regarding the number of criminal immigration prosecutions in the Southern District of California. You also requested intake guidelines for the Southern District of California United States Attorney's Office. The details of prosecution or intake guidelines are not appropriate for public release because the more criminals know of the specific guidelines, the more they will conform their conduct to avoid prosecution.

Please rest assured that the immigration laws in the Southern District of California are being vigorously enforced. Indeed, prosecutions for alien smuggling in Fiscal Year 2006 in the Southern District of California are rising dramatically. As of March 2006, the halfway point in the fiscal year, there were 342 alien smuggling cases filed in that jurisdiction. This compares favorably with the 484 alien smuggling prosecutions brought there during the entirety of Fiscal Year 2005. Moreover, as you are aware, Congress did not fully fund the President's budget request in FY 2006, and this increase in alien smuggling prosecutions in Southern California is being accomplished with the same or fewer number of Assistant United States Attorneys in that Office as in Fiscal Year 2005.

Each United States Attorney attempts to leverage his or her existing resources to achieve maximum results. The United States Attorney for the Southern District of California is already committing approximately half of her personnel to prosecute criminal immigration cases. We believe that figure demonstrates a substantial commitment to these cases. As you know, the Department of Justice is committed to criminal immigration law enforcement, as well as to the investigation and prosecution of other federal crimes, including counter-terrorism, firearm violations, fraud and corruption, and online sexual exploitation.

DAG000000468

The Honorable Dianne Feinstein
Page Two

Although felony immigration filings in the Southern District of California dropped from FY 2004 to FY 2005, that result flowed from a conscious decision to focus resources on seeking higher sentences for more serious offenders. And, in fact, the number of immigration defendants prosecuted who received prison sentences of between 1-12 months dropped from 896 in 2004 to 338 in 2005, while the number of immigration defendants who received sentences between 37-60 months *rose* from 116 to 246, and the number of immigration defendants who received sentences greater than 60 months *rose* from 21 to 77.

The effort to obtain higher sentences for the immigration violators who present the greatest threat to the community also results in more cases going to trial, and consequently the expenditure of more attorney time. In FY 2004 the Southern District tried 42 criminal immigration cases; in FY 2005 the District tried 89 criminal immigration cases – substantially more than any other Southwest Border district in 2005.

In addition, the Southern District has devoted substantial resources to investigating and prosecuting border corruption cases which pose a serious threat to both national security and continuing immigration violations. For example, in the past 12 months, the district has investigated and prosecuted seven corrupt Border Patrol agents and CBP officers who were working with alien smuggling organizations. These investigations and prosecutions typically have time-consuming financial and electronic surveillance components.

With respect to the statistical information you provided regarding immigration prosecutions in the Southern District, the data in the United States Attorneys' Case Management System is substantially different. For FY 2005, data from the Southern District shows a total of 543 defendants sentenced after conviction for immigration smuggling offenses, not the 387 you cited. In addition, although you cite 262 aliens convicted for illegal re-entry after deportation, data from the Southern District shows 880 convictions of defendants who re-entered illegally after deportation (charged under 8 U.S.C. 1325 and 1326, and under 18 U.S.C. 911) in FY 2005.

Moreover, the Department has been very successful in prosecuting alien smuggling nationally as well. Data on alien smuggling prosecutions from the Executive Office for United States Attorneys' database shows that these cases have risen steadily during the last three years. In Fiscal Year 2003 there were 2,015 alien smuggling cases filed under 8 U.S.C. § 1324. In Fiscal Year 2004, there were 2,451 such cases, and in Fiscal Year 2005 there were 2,682. We are proud of our increasing productivity in this area of criminal law enforcement.

DAG000000469

The Honorable Dianne Feinstein
Page Three

We appreciate your interest in this matter. Please do not hesitate to contact the Department of Justice if we can be of assistance in other matters.

Sincerely,

William E. Moschella
Assistant Attorney General

DAG000000470



U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

The Honorable Darrell Issa
U.S. House of Representatives
Washington, D.C. 20515

Dear Congressman Issa:

This is in response to your letter dated May 24, 2006, to Carol C. Lam, United States Attorney for the Southern District of California, regarding immigration prosecutions in that district, as well as your request to meet with USA Lam. We apologize for any inconvenience our delay in responding may have caused you.

Please rest assured that the immigration laws in the Southern District of California are being vigorously enforced. Indeed, prosecutions for alien smuggling in Fiscal Year 2006 in the Southern District of California are rising dramatically. As of March 2006, the halfway point in the fiscal year, there were 342 alien smuggling cases filed in that jurisdiction. This compares favorably with the 484 alien smuggling prosecutions brought there during the entirety of Fiscal Year 2005. Moreover, as you are aware, Congress did not fully fund the President's budget request in FY 2006, and this increase in alien smuggling prosecutions in Southern California is being accomplished with the same or fewer number of Assistant United States Attorneys in that Office as in Fiscal Year 2005.

Certainly the U.S. Attorney's Office for the Southern District of California devotes substantial available resources to the prosecution of illegal immigration, and to alien smuggling in particular. Fully half of its 110 Assistant U.S. Attorneys are used to prosecute illegal immigration cases.

Although felony immigration filings in the Southern District of California dropped from FY 2004 to FY 2005, that result flowed from a conscious decision to focus resources on seeking higher sentences for more serious offenders. And, in fact, the number of immigration defendants prosecuted who received prison sentences of between 1-12 months dropped from 896 in 2004 to 338 in 2005, while the number of immigration defendants who received sentences between 37-60 months *rose* from 116 to 246, and the number of immigration defendants who received sentences greater than 60 months *rose* from 21 to 77.

DAG000000471

The Honorable Darrell Issa
Page Two

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In addition, the Southern District has devoted substantial resources to investigating and prosecuting border corruption cases which pose a serious threat to both national security and continuing immigration violations. For example, in the past 12 months, the district has investigated and prosecuted seven corrupt Border Patrol agents and CBP officers who were working with alien smuggling organizations. These investigations and prosecutions typically have time-consuming financial and electronic surveillance components.

Please also know that decisions concerning whether to prosecute a given case as an alien smuggling case, or under some related charge, are case specific and very fact based. The number of possible alien smuggling charges that can be filed depends in part on the quality of the matter being referred to the United States Attorney's Office. For example, it is often necessary in an alien smuggling case to make a number of the smuggled aliens available as material witnesses, for the defense as well as the prosecution. If such witnesses are released at the time of the suspect's arrest, the opportunity to prosecute the case as an alien smuggling case, as opposed to a lesser charge, may be lost forever.

With regard to the immigration memo referred to in your letter, we cannot vouch for its authenticity. However, as you well realize, it is not physically possible to prosecute and imprison every single person apprehended on immigration violations. Thus, every United States Attorney's office necessarily uses prosecution guidelines to help identify which cases to prosecute under various circumstances. We have previously outlined for you in earlier correspondence the broad parameters of the guidelines used in the Southern District of California. Public dissemination of the details of such guidelines only serves to undercut law enforcement efforts. We note that the Bureau of Customs and Border Protection was heavily consulted during the drafting of the guidelines and approved of them at the time they were first disseminated.

Finally, we are aware that you recently spoke personally with USA Lam. If you are still interested in a meeting, please let us know.

DAG000000472

The Honorable Darrell Issa
Page Three

Please do not hesitate to contact the Department of Justice if we can be of assistance in other matters.

Sincerely,

William E. Moschella
Assistant Attorney General



U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

The Honorable Darrell Issa
U.S. House of Representatives
Washington, D.C. 20515

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DAG000000474

The Honorable Darrell Issa
Page Two

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Finally, we are aware that you recently spoke personally with USA Lam. If you are still interested in a meeting, please let us know.

DAG000000475

The Honorable Darrell Issa
Page Three

Please do not hesitate to contact the Department of Justice if we can be of assistance in other matters.

Sincerely,

William E. Moschella
Assistant Attorney General

DAG000000476

Elston, Michael (ODAG)

From: Voris, Natalie (USAEO)
Sent: Saturday, July 15, 2006 6:18 PM
To: Elston, Michael (ODAG); Smith, David L. (USAEO)
Cc: Scott-Finan, Nancy
Subject: Feinstein/Issa revision

Attachments: tmp.htm; Issa 5 24 06 ltr.wpd; Sen Feinstein 6 15 06.wpd



tmp.htm (11 KB) Issa 5 24 06 ltr.wpd (59 KB) Sen Feinstein 6 15 06.wpd (59 ...)

Thank you, Dave. Attached are my revisions on the two letters.

A few things to note:

- 1) Though we feel comfortable (based on the stats in email below) with comparing SD/CA to the other SWB districts, I do not like the sentence in both letters which states at the end of a paragraph that SD/CA has tried a certain number of immigration cases that is "substantially more than any other Southwest Border district in 2005." I would recommend that we take out this sentence but would like to get OLA and ODAG's opinion first.
- 2) We have retained but modified language about intake guidelines - I know we discussed taking out intake language completely but I'm not sure what the final verdict was. I don't know if the existence of guidelines for this particular district is "out there" already. Please look at the current language re intake guidelines. I added our standard language - "USAOs take allegations of criminal conduct very seriously and carefully review any investigative evidence presented to support such allegations in light of the Principles of Federal Prosecution." We could omit all references to guidelines and just rely on this standard language. Again, I defer to OLA and ODAG. If it has been publicized that immigration guidelines exist for this district, then perhaps we need to retain the intake language to remind Issa and Feinstein that these are not mandatory guidelines.
- 3) Dave and Nancy - I didn't realize Issa and Carol met - do we need to acknowledge anything more about this meeting? Did the district notify us about this meeting??

<<Issa 5 24 06 ltr.wpd>> <<Sen Feinstein 6 15 06.wpd>>

Thanks,
nv

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>
>
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> From: Smith, David L. (USAEO)
> Sent: Saturday, July 15, 2006 1:21 PM
> To: Voris, Natalie (USAEO)
> Cc: Scott-Finan, Nancy
> Subject: FW: Feinstein revision
>
> Natalie,
>
> Here is my redraft of the Issa letter. I made it as similar to the
> Feinstein letter as I could.
>
> As far as the immigration trials issue, here is what LIONS shows, per
> my review today:
>

> 04 05
> AZ 21 16
> NM 3 6
> WDTX 11 9
> SDTX 31 53
> SDCA 37 86

> Thus, the numbers do support the statement that SDCA, which is a
> smaller district than SDTX, did substantially more trials than other
> SW border districts in 2005.

> SDCA must have added in 5 trials to their 2004 numbers (to make 42)
> and 3 to the 2005 numbers (to make 89) based on trials they believed
> were immigration related but were not captured in LIONS. That is not
> fair, since we need to just stick with straight LIONS data. So I have
> changed the text in BOTH letters to say "at least 37" and "at least
> 86" trials. (Feinstein letter is re-attached below.)

> Natalie, I assume you will pass these on to Mike for his review by
> tomorrow morning. If you or Mike need anything else on these please
> let me know.

> Also, would you or Nancy please send me back the final versions of
> these letters? SDCA has asked me for the final versions.

> Thanks

> Dave

> << File: Issa.5.24.06.(4).ltr.wpd >>

> From: Smith, David L. (USAEO)
> Sent: Friday, July 14, 2006 6:38 PM
> To: Voris, Natalie (USAEO)
> Cc: Scott-Finan, Nancy
> Subject: Feinstein revision

> Natalie,

> Here is my redraft of the Feinstein letter. I took out what seemed
> defensive and any numbers that were not in LIONS. I will double check
> that the LIONS data supports the "more trials than other SW border
> districts" statement, and will send you a separate email on that.
> Note that the data on 1324 cases filed as of March 06 (342) comes from
> LIONS also, although it is not on the three sheets we are giving
> Feinstein because those sheets cover all immigration cases and they do
> not break out 1324 specifically. I am pasting below the email from
> Data Analysis to show where the 342 number comes from.

> I will send you the Issa letter either later tonight or tomorrow
> morning.

> Thanks

> << File: Sen.Feinstein.6.15.06.(4).wpd >>
> David L. Smith
> Legislative Counsel
> Executive Office for U.S. Attorneys
> (202) 353-3035
> David.L.Smith2@usdoj.gov

>
>

From: Tripodo, Joe (USAEO)
> Sent: Tuesday, July 11, 2006 5:26 PM
> To: Smith, David L. (USAEO)
> Subject: RE: CAS - 8 U.S.C. 1324 data
>
> Correct.
>
>
>

From: Smith, David L. (USAEO)
> Sent: Tuesday, July 11, 2006 5:25 PM
> To: Tripodo, Joe (USAEO)
> Subject: RE: CAS - 8 U.S.C. 1324 data
>
> Thanks Joe! So projected for 06 is 684, just to confirm...correct?
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From: Tripodo, Joe (USAEO)
> Sent: Tuesday, July 11, 2006 5:23 PM
> To: Smith, David L. (USAEO)
> Cc: Tone, Barbara (USAEO)
> Subject: CAS - 8 U.S.C. 1324 data
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> Dave,
>
> Per our conversation, here are the number of cases filed for 8 U.S.C.
> 1324 for the Southern District of California for Fiscal Years
> 2004-2006 (actual data as of March 2006):
>
> Cases Filed
> FY04 - 497
> FY05 - 484
> FY06 - 342 (actual data as of March 2006)
>
> Hope this helps and sorry to hear about the broken leg Hope it
> heals soon!
>
> Joe
>
> Joe Tripodo
> Management Analyst
> Data Analysis Staff
>
>
>



U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

The Honorable Darrell Issa
U.S. House of Representatives
Washington, D.C. 20515

Dear Congressman Issa:

This is in response to your letter dated May 24, 2006, to Carol C. Lam, United States Attorney for the Southern District of California, regarding immigration prosecutions in that district, as well as your request to meet with USA Lam. We apologize for any inconvenience our delay in responding may have caused you.

Please know that immigration enforcement is critically important to the Department and to the United States Attorney's Office in the Southern District of California. That office is presently committing fully half of its Assistant United States Attorneys to prosecute criminal immigration cases.

The immigration prosecution philosophy of the Southern District focuses on deterrence by directing its resources and efforts against the worst immigration offenders and by bringing felony cases against such defendants that will result in longer sentences. For example, although the number of immigration defendants who received prison sentences of between 1-12 months fell from 896 in 2004 to 338 in 2005, the number of immigration defendants who received sentences between 37-60 months rose from 116 to 246, and the number of immigration defendants who received sentences greater than 60 months rose from 21 to 77.

Prosecutions for alien smuggling in the Southern District under 8 U.S.C. § 1324 are rising sharply in Fiscal Year 2006. As of March 2006, the halfway point in the fiscal year, there were 342 alien smuggling cases filed in that jurisdiction. This compares favorably with the 484 alien smuggling prosecutions brought there during the entirety of Fiscal Year 2005.

The effort to obtain higher sentences for the immigration violators who present the greatest threat to the community also results in more cases going to trial and, consequently, the expenditure of more attorney time. In FY 2004, the Southern District tried at least 37 criminal immigration cases; in FY 2005, the District tried at least 86 criminal immigration cases – substantially more than any other Southwest Border district in 2005.

DAG000000480

The Honorable Darrell Issa
Page Two

The Southern District has also devoted substantial resources to investigating and prosecuting border corruption cases which pose a serious threat to both national security and continuing immigration violations. For example, in the past 12 months, the district has investigated and prosecuted seven corrupt Border Patrol agents and Customs and Border Protection officers who were working with alien smuggling organizations. These investigations and prosecutions typically have time-consuming financial and electronic surveillance components.

With regard to the immigration memo referred to in your letter, we cannot vouch for its authenticity. The Southern District of California does use immigration prosecution guidelines to help identify which cases to prosecute under various circumstances; however, these guidelines are not determinative of whether a case will be accepted for prosecution. The specific details of immigration prosecution guidelines, if the guidelines even exist, are not appropriate for public release because the more criminals know of the guidelines, the more they will conform their conduct to avoid prosecution. We note that the Bureau of Customs and Border Protection was heavily consulted during the drafting of the guidelines and approved of them at the time they were first disseminated. Each United States Attorney's Office takes allegations of criminal conduct very seriously and carefully reviews any investigative evidence presented to support such allegations in light of the *Principles of Federal Prosecution*.

Finally, we are aware that you have recently spoken with USA Lam. If you are still interested in a meeting with other Department of Justice officials, please contact me to schedule a meeting on a mutually convenient date. We appreciate your interest in this matter. Please do not hesitate to contact the Department of Justice if we can be of assistance in other matters.

Sincerely,

William E. Moschella
Assistant Attorney General

DAG000000481



U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

The Honorable Dianne Feinstein
United States Senator
Washington, D.C. 20510

Dear Senator Feinstein:

This is in response to your letter dated June 15, 2006, to the Attorney General regarding the issue of immigration-related prosecutions in the Southern District of California. We apologize for any inconvenience our delay in responding may have caused you.

Attached please find the information you requested regarding the number of criminal immigration prosecutions in the Southern District of California. You also requested intake guidelines for the Southern District of California United States Attorney's Office. The details of prosecution or intake guidelines, if these guidelines even exist, are not appropriate for public release because the more criminals know of the specific guidelines, the more they will conform their conduct to avoid prosecution. Each United States Attorney's Office takes allegations of criminal conduct very seriously and carefully reviews any investigative evidence presented to support such allegations in light of the *Principles of Federal Prosecution*.

Please know that immigration enforcement is critically important to the Department and to the United States Attorney's Office in the Southern District of California. That office is presently committing fully half of its Assistant United States Attorneys to prosecute criminal immigration cases.

The immigration prosecution philosophy of the Southern District focuses on deterrence by directing its resources and efforts against the worst immigration offenders and by bringing felony cases against such defendants that will result in longer sentences. For example, although the number of immigration defendants who received prison sentences of between 1-12 months fell from 896 in 2004 to 338 in 2005, the number of immigration defendants who received sentences between 37-60 months rose from 116 to 246, and the number of immigration defendants who received sentences greater than 60 months rose from 21 to 77.

Prosecutions for alien smuggling in the Southern District under 8 U.S.C. § 1324 are rising sharply in Fiscal Year 2006. As of March 2006, the halfway point in the fiscal year, there were 342

DAG000000482

The Honorable Dianne Feinstein
Page Two

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The effort to obtain higher sentences for the immigration violators who present the greatest threat to the community also results in more cases going to trial and, consequently, the expenditure of more attorney time. In FY 2004, the Southern District tried at least 37 criminal immigration cases; in FY 2005, the District tried at least 86 criminal immigration cases – substantially more than any other Southwest Border district in 2005.

The Southern District has also devoted substantial resources to investigating and prosecuting border corruption cases which pose a serious threat to both national security and continuing immigration violations. For example, in the past 12 months, the district has investigated and prosecuted seven corrupt Border Patrol agents and Customs and Border Patrol officers who were working with alien smuggling organizations. These investigations and prosecutions typically have time-consuming financial and electronic surveillance components.

Finally, the United States Attorneys' Offices nationwide have been vigorously prosecuting alien smuggling. Data on alien smuggling prosecutions from the Executive Office for United States Attorneys' database shows that these cases have risen steadily during the last three years. In Fiscal Year 2003, there were 2,015 alien smuggling cases filed under 8 U.S.C. § 1324. In Fiscal Year 2004, there were 2,451 such cases, and in Fiscal Year 2005, there were 2,682.

We appreciate your interest in this matter. Please do not hesitate to contact the Department of Justice if we can be of assistance in other matters.

Sincerely,

William E. Moschella
Assistant Attorney General

DAG000000483

Elston, Michael (ODAG)

From: Scott-Finan, Nancy
Sent: Monday, July 17, 2006 4:44 PM
To: Elston, Michael (ODAG); Voris, Natalie (USAEO); Smith, David L. (USAEO)
Subject: RE: Feinstein/Issa revision

The last draft I was was the Saturday night versin.

-----Original Message-----

From: Elston, Michael (ODAG)
Sent: Monday, July 17, 2006 4:43 PM
To: Scott-Finan, Nancy; Voris, Natalie (USAEO); Smith, David L. (USAEO)
Subject: Re: Feinstein/Issa revision

I agree with Natalie's comments from Saturday night. Additionally, I do not like the idea of confirming our pros guidelines. All I would say is that CBP agreed to them (whatever they may be). Has anyone sent me a more recent draft?

Mike

-----Original Message-----

From: Scott-Finan, Nancy
To: Voris, Natalie (USAEO); Elston, Michael (ODAG); Smith, David L. (USAEO)
Sent: Mon Jul 17 16:02:12 2006
Subject: RE: Feinstein/Issa revision

Mike, do you have any comments on the two letters?

-----Original Message-----

From: Voris, Natalie (USAEO)
Sent: Saturday, July 15, 2006 6:18 PM
To: Elston, Michael (ODAG); Smith, David L. (USAEO)
Cc: Scott-Finan, Nancy
Subject: Feinstein/Issa revision

Thank you, Dave. Attached are my revisions on the two letters.

A few things to note:

- 1) Though we feel comfortable (based on the stats in email below) with comparing SD/CA to the other SWB districts, I do not like the sentence in both letters which states at the end of a paragraph that SD/CA has tried a certain number of immigration cases that is "substantially more than any other Southwest Border district in 2005." I would recommend that we take out this sentence but would like to get OLA and ODAG's opinion first.
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- 3) Dave and Nancy - I didn't realize Issa and Carol met - do we need to acknowledge anything more about this meeting? Did the district notify us about this meeting??

<<Issa 5 24 06 ltr.wpd>> <<Sen Feinstein 6 15 06.wpd>>

Thanks,

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> From: Smith, David L. (USAE0)
> Sent: Saturday, July 15, 2006 1:21 PM
> To: Voris, Natalie (USAE0)
> Cc: Scott-Finan, Nancy
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> Natalie,

> Here is my redraft of the Issa letter. I made it as similar to the
> Feinstein letter as I could.

> As far as the immigration trials issue, here is what LIONS shows, per
> my review today:

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> were immigration related but were not captured in LIONS. That is not
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> 86" trials. (Feinstein letter is re-attached below.)

> Natalie, I assume you will pass these on to Mike for his review by
> tomorrow morning. If you or Mike need anything else on these please
> let me know.

> Also, would you or Nancy please send me back the final versions of
> these letters? SDCA has asked me for the final versions.

> Thanks

> Dave

> << File: Issa.5.24.06.(4).ltr.wpd >>

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> Data Analysis to show where the 342 number comes from.

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> << File: Sen.Feinstein.6.15.06.(4).wpd >>

> David L. Smith
> Legislative Counsel
> Executive Office for U.S. Attorneys
> (202) 353-3035
> David.L.Smith2@usdoj.gov

> From: Tripodo, Joe (USAEO)
> Sent: Tuesday, July 11, 2006 5:26 PM
> To: Smith, David L. (USAEO)
> Subject: RE: CAS - 8 U.S.C. 1324 data

> Correct.

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> Sent: Tuesday, July 11, 2006 5:25 PM
> To: Tripodo, Joe (USAEO)
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> 2004-2006 (actual data as of March 2006):

> Cases Filed
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> FY05 - 484
> FY06 - 342 (actual data as of March 2006)

> Hope this helps and sorry to hear about the broken leg Hope it
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> Joe

> Joe Tripodo
> Management Analyst
> Data Analysis Staff

Elston, Michael (ODAG)

From: Steiglitz, Albert
Sent: Tuesday, July 18, 2006 7:10 PM
To: Elston, Michael (ODAG)
Subject: Following up- SD CA

Mike-

Per your request, I spent some time this afternoon reading over the memo you received from SD CA and crunching some numbers from the Sentencing Commission's "Sourcebooks of Federal Sentencing Statistics" from the past few years, with a focus on the reported drop in immigration prosecutions in SD CA. The information below is not (as you'll see) in the form of a finished memo or anything, as I understood you to be looking for more of a "what do you think" kind of report. If you'd like more or find this too disorganized, please let me know and I can try to flesh out these initial impressions.

What is perhaps most striking to me is the fact that of the Southwest Border Districts (SD CA, D AZ, D NM, SD TX, WD TX), SD CA is the only one that prosecuted *fewer* immigration cases in 2005 than it did in 2001 and 2002. After a brief "spike" in 2003 (a 25% increase in prosecutions, which, to put it in context, occurred in the same year that all of the other SW Border Districts except WD TX saw between 31% and 40% increases) and virtually no change in 2004, SD CA in 2005 suffered the precipitous 31% drop which presumably drew this office's attention. SD CA is also the only SW Border District to average a negative (-4.15%) rate of growth in the number of annual immigration prosecutions during the 2001-05 period, which is all the more noteworthy given that with the exception of D AZ (which averaged just over 9% annual growth), the other SW Border Districts averaged double-digit growth rates over the same period.

SD CA seems to rest its defense on a sort of "quality, not quantity" idea, essentially arguing that in lieu of seeking a high filing count, it is more concerned with the duration for which it puts immigration offenders away. SD CA cites as evidence of a "dramatic trend towards higher sentences in immigration cases" the fact that 5.1% of its immigration sentencings in 2005 were for more than 60 months, compared to just 0.8% in 2002. What is not mentioned by SD CA, however, is that 2005 is the first year of the 2001-05 period in which SD CA was not *dead last* among SW Border Districts (coming in consistently under 1%) in this category. Thus, while the improvement is no doubt commendable, any "trend" upward from last place is likely to be "dramatic," as the context provided by these supplemental figures hopefully demonstrates.

There also remains the policy question of whether SD CA's strategy is appropriate. That is, are the goals of the criminal justice and immigration system best served by focusing on fewer prosecutions that in turn seek higher penalties? I do not pretend to know the answer to this question, but SD CA seems to take it as a given that its policy prescription is in fact the right one.

SD CA also relies on the "not enough resources" defense, noting that it conducts *more* sentencings than comparably-sized USAOs across the country (a somewhat odd argument to make in its support given its subsequent insistence that "quality," not quantity of sentencings, is what matters), and again, that rather than spending time prosecuting what SD CA characterizes as less serious cases (e.g. "coyote" cases), its prosecutors are focusing their time and energy on bigger-ticket cases. Again, this seems to be a policy choice SD CA is making, one premised on the belief that the goals of immigration policy are best served by fewer prosecutions with longer sentences. And as noted above, I do not have the expertise to evaluate this claim, but can only note that it seems to underlie SD CA's law enforcement strategy.

Finally, though I am not overly familiar with the Ashcroft memo, my initial read of it leaves me somewhat skeptical of SD CA's claim that its strategy is "true" to the Ashcroft memo. The Ashcroft memo (of 9/22/03, if I've got the right one) gives federal prosecutors a duty "to charge and pursue the most serious, readily provable offense or offenses that are supported by the facts of the case[.]" SD CA, it seems, is in effect arguing that this duty implies that given the choice between multiple "lesser" prosecutions and a single, more serious prosecution, the prosecutor should opt to pursue the latter. I'm not certain that this directive is part of the Ashcroft memo, and I suspect SD CA's effort to invoke the Ashcroft memo in its defense might be inappropriate, but again, I claim no expertise in this area and wish merely to flag the point for your attention.

I hope the info and comments above are (A) somewhat helpful, and (B) along the lines of what you were looking for when you gave me this earlier. I look forward to hearing your thoughts on this and of course I would be happy to provide you with any further information that might be of value to you. Thanks again for lunch today, and I'll look forward to catching up with you tomorrow. Should you need anything after hours, my cell phone # is

BJ

Elston, Michael (ODAG)

From: Steiglitz, Albert
Sent: Wednesday, July 19, 2006 9:51 AM
To: Elston, Michael (ODAG)
Subject: RE: Following up- SD CA

Mike-

Just wanted to follow up on the items below and also see if you had anything I could help you with this morning. Hope your day's off to a good start.

BJ

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BJ

Elston, Michael (ODAG)

From: Voris, Natalie (USAEO)
Sent: Wednesday, August 02, 2006 6:59 PM
To: Elston, Michael (ODAG); Goodling, Monica
Subject: FW: Lam is meeting with Issa and Sensenbrenner

FYI

-----Original Message-----

From: Seidel, Rebecca
Sent: Wednesday, August 02, 2006 6:56 PM
To: Epley, Mark D; Otis, Lee L; Bounds, Ryan W (OLP); Mullane, Hugh;
Voris, Natalie (USAEO)
Cc: Scott-Finan, Nancy; Roland, Sarah E
Subject: FW: Lam is meeting with Issa and Sensenbrenner

Sounds like she handled well and it was actually constructive. See below.

-----Original Message-----

From: Lam, Carol (USACAS)
Sent: Wednesday, August 02, 2006 6:50 PM
To: Seidel, Rebecca
Subject: RE: Lam is meeting with Issa and Sensenbrenner

Sorry, meant to email you earlier but other events overtook me.

It was fine (at least I think it was). The tone was civil and at times even friendly. I was accompanied by my appellate chief Roger Haines and our Intake supervisor Steve Peak. Issa and Sensenbrenner had about 4 staffers there total. Chrm Sensenbrenner had a single theme he kept coming back to, which is that we aren't doing enough coyote prosecutions and that they are the key to controlling the border. (This is obviously the Border Patrol complaint that was channelled through Issa to Sensenbrenner). I noted that the first 3 times we prosecute a coyote, we get sentences of 60 days, 6 months, and maybe a year, respectively, if we are lucky; whereas the same attorney resources can be used to prosecute criminal aliens with priors for rape, murder and child molestations and we can get sentences of 7-8 years. We have more of the latter type of case than we can handle, so essentially I must make a choice -- prosecute the coyotes who are smuggling but not endangering anyone, or the rapists and murderers who are coming back to rape and murder again.

He noted that among the Southwest Border USAOs, our felony immigration filings are low. I explained that we set out a couple of years ago to deliberately seek higher sentences for the worst offenders; this meant more cases would go to trial, but we would hold the line and not sell the cases for less time. The statistics show that we have, in fact, achieved significantly higher average sentences in our immigration cases; the cost was that our immigration trial rate more than DOUBLED (from 42 trials in 2004 to 89 trials in 2005) and we had to reduce the number of low-end coyote cases we filed. Cong Issa seemed to grasp this concept quickly; he commented that it is too bad we don't have statistics that reflect the matrix of felony immigration filings against lengths of sentences.

We urged them to fully fund the President's budget; thanked Chrm Sensenbrenner for the enforcement provisions in his immigration bill; and some observations were exchanged about the difficulties of prosecuting cases in the 9th Circuit. Congressman Issa asked me how the 4 additional SW border AUSA positions (announced by the AG on Monday) would help me; I said that they would allow me to fill attorney

vacancies that I have had to leave vacant because of the budget situation. Issa noted to Sensenbrenner that he doesn't understand why their prior appropriations don't seem to be "trickling down" to the USAOs, and I interjected that the unfunded COLAs and government-wide rescissions were erasing what appeared to be additional appropriations.

That was about it. We left on very cordial terms without any request for follow-up information. Let me know if you need any additional information, and thanks for preparing me.

Carol

-----Original Message-----

From: Seidel, Rebecca
Sent: Wednesday, August 02, 2006 3:16 PM
To: Lam, Carol (USACAS)
Cc: Epley, Mark D
Subject: RE: Lam is meeting with Issa and Sensenbrenner

How did the Issa/Sensenbrenner meeting go?

-----Original Message-----

From: Lam, Carol (USACAS)
Sent: Wednesday, August 02, 2006 11:53 AM
To: Seidel, Rebecca; Parent, Steve (USAEO); Bevels, Lisa (USAEO); Voris, Natalie (USAEO)
Cc: Jordan, Wyevetra G; Epley, Mark D
Subject: RE: Lam is meeting with Issa and Sensenbrenner

Thanks, Steve; this helps. -- Carol

-----Original Message-----

From: Parent, Steve (USAEO)
Sent: Wednesday, August 02, 2006 5:24 AM
To: Lam, Carol (USACAS); Seidel, Rebecca; Bevels, Lisa (USAEO); Voris, Natalie (USAEO)
Cc: Epley, Mark D; Jordan, Wyevetra G
Subject: Re: Lam is meeting with Issa and Sensenbrenner

The 29 percent figure is actual funded position increase from FY 2000 to present.

-----Original Message-----

From: Lam, Carol (USACAS) <CLam@usa.doj.gov>
To: Seidel, Rebecca <Rebecca.Seidel@usdoj.gov>; Parent, Steve (USAEO) <SParent@usa.doj.gov>; Bevels, Lisa (USAEO) <LBevels@usa.doj.gov>; Voris, Natalie (USAEO) <NVoris@usa.doj.gov>
Cc: Epley, Mark D <Mark.D.Epley@usdoj.gov>; Jordan, Wyevetra G <Wyevetra.G.Jordan@usdoj.gov>
Sent: Tue Aug 01 22:12:05 2006
Subject: Re: Lam is meeting with Issa and Sensenbrenner

I assume nobody is taking credit for the 29% figure, and I'm on my own?

-----Original Message-----

From: Seidel, Rebecca <Rebecca.Seidel@usdoj.gov>
To: Parent, Steve (USAEO) <SParent@usa.doj.gov>; Bevels, Lisa (USAEO) <LBevels@usa.doj.gov>; Lam, Carol (USACAS) <CLam@usa.doj.gov>; Voris, Natalie (USAEO) <NVoris@usa.doj.gov>
Cc: Epley, Mark D <Mark.D.Epley@usdoj.gov>; Jordan, Wyevetra G <Wyevetra.G.Jordan@usdoj.gov>
Sent: Mon Jul 31 18:01:45 2006
Subject: RE: Lam is meeting with Issa and Sensenbrenner

Also adding Mark Epley and Wyvetra Jordan . Mark, Wye - where did the 29% increase number come from? (this is re the press release on the supplemental approps funding AUSAs)

-----Original Message-----

From: Voris, Natalie (USAEO)
Sent: Monday, July 31, 2006 8:17 PM
To: Seidel, Rebecca; Lam, Carol (USACAS); Bevels, Lisa (USAEO); Parent, Steve (USAEO)
Subject: Re: Lam is meeting with Issa and Sensenbrenner

This is definitely a question for rmp - I have added lisa and steve to the email.

-----Original Message-----

From: Lam, Carol (USACAS) <CLam@usa.doj.gov>
To: Voris, Natalie (USAEO) <NVoris@usa.doj.gov>; Seidel, Rebecca <Rebecca.Seidel@usdoj.gov>
Sent: Mon Jul 31 20:09:54 2006
Subject: RE: Lam is meeting with Issa and Sensenbrenner

Thanks, Natalie. I do have one other concern -- the DOJ press release sent out today says that the "the number of AUSAs in the Southwest border districts has increased 29 percent since 2000, to a total of 561." I'm not sure where the 29% figure came from; my own FTE increased from 119 to 125 during the last 4 years; I think the percentage increase has been similar in the other districts. Can anyone tell me how the 29% increase was calculated, in case the Congressmen use this figure in our discussion?

From: Voris, Natalie (USAEO)
Sent: Monday, July 31, 2006 4:08 PM
To: Lam, Carol (USACAS)
Subject: FW: Lam is meeting with Issa and Sensenbrenner

Carol,
Lisa Bevels is traveling to the Budget Officers training at the NAC this week, but she gives you the best times for a conversation with her below. I clarified with Lisa that it's human trafficking approps Issa is interested in, not prosecutions. Lisa said that she was unaware of any specific human trafficking funds ever going to USAOs.

Please let me know if you need anything else. I'm not the budget expert, but I can try to point you in the right direction.

nv

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To: Voris, Natalie (USAEO); Parent, Steve (USAEO)
Subject: RE: Lam is meeting with Issa and Sensenbrenner

I will be giving a speech at the BO Conference on Wednesday. If she wants, she can email me and set up a time to talk tomorrow or Wednesday last morning or all afternoon. Civil Rights tracks the Human Trafficking case data for the Department. I'm not sure if Barbara Tone can come up with these cases through our system--they are probably part of immigration or some could even be in child abuse (women and children trafficking for sexual exploitation). Dave Smith asked us a few weeks ago about Human Trafficking and we did not have the data.

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To: Bevels, Lisa (USAEO); Parent, Steve (USAEO)
Subject: Lam is meeting with Issa and Sensenbrenner

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Thanks,
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From: Epley, Mark D
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Subject: Lam is meeting with Issa and Sensenbrenner

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niv

Elston, Michael (ODAG)

From: Goodling, Monica
Sent: Friday, August 11, 2006 3:37 PM
To: Elston, Michael (ODAG)
Subject: Griffin

Attachments: resume.doc; military bio 2006 revised.doc



resume.doc (64 KB)



military bio 2006
revised.doc ...

J. TIMOTHY GRIFFIN

EDUCATION

Tulane University Law School. New Orleans, Louisiana. Juris Doctor, *cum laude*, May 1994. Cumulative G.P.A.: 3.25/4.00; Rank: 80/319, Top 25%. Common law and civil law curricula. Legal Research and Writing grade: A.

- ✓ Senior Fellow, Legal Research and Writing Program. Taught first year law students legal research and writing.
- ✓ Volunteer, The New Orleans Free Tutoring Program, Inc.

Oxford University, Pembroke College. Oxford, England. Graduate School, British and European History, 1990-1991.

- ✓ Under-secretary and Treasurer, Oxford University Clay Pigeon Shooting Club.

Hendrix College. Conway, Arkansas. Bachelor of Arts in Economics and Business, *cum laude*, June 1990. Cumulative G.P.A.: Major 3.79/4.00, Overall 3.78/4.00; Rank: 22/210, Top 10%.

- ✓ Oxford Overseas Study Course, September 1988-May 1989, Oxford, England.

WORK EXPERIENCE

Trial Counsel, U.S. Army Judge Advocate General's (JAG) Corps. Criminal Law Branch, Office of the Staff Judge Advocate. Fort Campbell, Kentucky, September 2005-Present.

- ✓ Provide legal advice to E Co., 1st and 3rd Brigade Combat Teams (R) (P), 101st Airborne Division (Air Assault).
- ✓ Prosecute Army criminal cases at courts-martial and federal criminal cases as a Special Assistant U.S. Attorney (SAUSA), Western District of Kentucky and Middle District of Tennessee.

Special Assistant to the President and Deputy Director. Office of Political Affairs, The White House. Washington, D.C. April 2005-Present (currently on military leave).

- ✓ Advised President George W. Bush and Vice-President Richard B. Cheney on political matters.
- ✓ Organized and coordinated political support for the President's agenda, including the nomination of Judge John Roberts to be Chief Justice of the U.S. Supreme Court.

Research Director and Deputy Communications Director. 2004 Presidential Campaign, Republican National Committee (RNC). Washington, D.C. June 2002-December 2004.

- ✓ Briefed Vice-President Richard B. Cheney and other Bush-Cheney 2004 (BC04) and RNC senior staff.
- ✓ Managed RNC Research, the primary research resource for BC04, with over 25 staff.
- ✓ Worked daily with BC04 senior staff on campaign and press strategy, ad development and debate preparation.

Special Assistant to the Assistant Attorney General. Criminal Division, U.S. Department of Justice. Washington, D.C. March 2001-June 2002.

- ✓ Tracked issues for Assistant Attorney General Michael Chertoff and worked with the Office of International Affairs (OIA) on matters involving extradition, provisional arrest and mutual legal assistance treaties (MLATs).
- ✓ Prosecuted federal firearm and drug cases and served as the coordinator for Project Safe Neighborhoods, a strategy to reduce firearm-related violence through cooperation between state and federal law enforcement, as a Special Assistant U.S. Attorney, Eastern District of Arkansas, in Little Rock, September 2001-June 2002.

Deputy Research Director. 2000 Presidential Campaign, Republican National Committee (RNC). Washington, D.C. September 1999-February 2001.

- ✓ Managed RNC Research, the primary research resource for Bush-Cheney 2000 (BC00), with over 30 staff.
- ✓ Served as legal advisor in Volusia and Brevard Counties for BC00 Florida Recount Team.